UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/73/Add.1
13 February 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 2000/45

Addendum

Communications to and from Governments*

* The executive summary of this report and the confidential information form (see appendix) are being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

GE.01-11089 (E)

Executive summary

At its fifty-fifth session, the Commission on Human Rights, in its resolution 2000/45, requested all Governments to cooperate with and assist the Special Rapporteur in the performance of the tasks and duties mandated, to supply all information requested and to respond to the Special Rapporteur's visits and communications. The Commission, furthermore, welcomed the efforts by the Special Rapporteur to seek information from Governments concerning specific cases of alleged violence, in order to identify and investigate situations of violence against women, its causes and consequences, in particular, where appropriate, by sending joint urgent action appeals and communications with other special rapporteurs.

The Special Rapporteur has produced a standard reporting form which may be used to document alleged instances of violence against women (see appendix). In this connection, it should be emphasized that, in accordance with her mandate, the Special Rapporteur is in a position only to process cases of alleged violence against women that are gender specific, that is violence or threats of violence directed against women because of their gender. The definition of gender-based violence used by the Special Rapporteur is taken from the United Nations Declaration on the Elimination of Violence against Women, adopted by the General Assembly in its resolution 48/104 on December 1993.

The Special Rapporteur wishes to inform the Commission that during the period under review, she transmitted communications to the Governments of Algeria, Bahrain, Bangladesh, Canada, China, Indonesia, the Islamic Republic of Iran, Israel, Qatar, Nigeria, the Russian Federation, Sri Lanka, the United Arab Emirates and the United States of America. In addition, the Governments of Algeria, Bangladesh, Canada, Sri Lanka, the Russian Federation, the United Arab Emirates and the United States of America provided the Special Rapporteur with replies on cases submitted during the year under review, whereas Canada, Cuba, India and Mexico did so with respect to cases submitted in previous years.

This report contains, on a country-by-country basis, summaries of the general allegations, and individual as well as urgent appeals transmitted to Governments and their replies thereto. Observations by the Special Rapporteur have also been included where applicable.

Annex

INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES, WITH RESPECT TO VARIOUS COUNTRIES

CONTENTS

	Paragraphs	Page
INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES	1 - 61	4
Algeria	1 - 2	4
Bahrain	3 - 5	4
Bangladesh	6 - 10	4
Canada	11 - 14	6
China	15 - 21	6
Cuba	22	17
India	23 - 34	18
Indonesia	35	20
Iran (Islamic Republic of)	36	20
Israel	37 - 38	21
Mexico	39 - 40	21
Nigeria	41 - 42	22
Qatar	43 - 44	22
Russian Federation	45 - 50	23
Sri Lanka	51 - 57	24
United Arab Emirates	58	26
United States of America	59 - 61	26
Appendix: Violence against women information form		28

INFORMATION REVIEWED BY THE SPECIAL RAPPORTEUR WITH RESPECT TO VARIOUS COUNTRIES

Algeria

1. On 25 January 2000, the Special Rapporteur sent an urgent appeal together with the Special Rapporteur on the question of torture and the Special Rapporteur on the independence of judges and lawyers on behalf of **Ms. Nabira Mesbah**, a lawyer who had defended torture victims before the Special Court of Algiers with jurisdiction for hearing cases of terrorism between 1992 and 1995. She was reportedly convicted of fraud and arrested on 19 December 1999, and detained in Blida prison. Although she was reportedly eight months' pregnant and suffering from diabetes, Ms. Mesbah was not receiving the necessary medical care and her request to be transferred to a hospital had been denied.

2. By letter dated 8 February 2000, the Government of Algeria stated that Ms. Nabira Mesbah had been arrested in flagrante delicto and had admitted to being involved in judicial corruption. On 25 January 2000, she was sentenced in a public hearing to 18 months' imprisonment. A group of lawyers had acted as her defence. With regard to her health, Ms. Mesbah was presently under medical supervision at the civil hospital of Blida. The Government stipulated that the proceedings of which she had been the subject had nothing to do with her work as a lawyer. By letter dated 18 February, the Government informed the Special Rapporteur that she had been granted temporary release on 9 February 2000.

Bahrain

3. On 21 December 2000 the Special Rapporteur sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants to the Government regarding **Yeshiworq Desta Zewdu** (aged 20), a documented Ethiopian migrant worker in Bahrain. According to information received she was sentenced to death by a Bahraini court on 28 November 2000 for the murder of her employer, Sadia Baltar.

4. She is said to have suffered both physical and psychological abuse during her employment, and furthermore, she had not been paid for the last two years. It is reported that she faced trial without any legal assistance, and that the abuse which she suffered and the effect of the abuse on her state of mind and her action were not taken into consideration when convicting and sentencing her for murder. The Special Rapporteurs appealed to the Government for Ms. Yeshiworq Desta Zewdu's sentence to be commuted if upheld on appeal.

Observations

5. The Special Rapporteur recognizes that there has been insufficient time for the Government to respond to her letter of 21 December 2000.

Bangladesh

6. By letter dated 10 October 2000 sent in conjunction with the Special Rapporteur on torture, the Special Rapporteur advised the Government that she had received information concerning an alleged increase in the number of women who have been subjected to the practice of burning with acid following, for example, family disputes, rejection of marriage or sexual advances. It is reported that in a number of cases there has been no investigation nor attempt to bring the perpetrators to justice. The following cases were brought to the attention of the Government.

7. On 20 July 2000 **Bhancha Sana** was reportedly attacked with acid outside her house in the village of Ghughumari, in the district of Satkira. It is alleged that her chest was severely burnt in the incident and other parts of her body were also burnt. **Fatima Begum** is reported to have been attacked with acid in her home town in the district of Sadar Kisoregonji at the Nagua bus stand. Her head, face, hands and throat have been permanently scarred. **Shah Alam** was allegedly attacked with acid in her village, Birponiu, in the district of Bogra, on 22 July 2000. She was seriously and permanently injured on her face, chest and waist. She suffered minor injuries on her hands and throat.

8. By letter dated 19 December 2000, the Government replied that the allegations regarding specific incidents of acid attacks had been investigated. The Government stated that it is fully committed to addressing the crime of acid attacks firmly and judicially. Recent legislation measures, including the Women and Children Repression Act 2000, and the Public Safety Act 2000, have been promulgated in addressing crimes and offences in the country, particularly as these relate to women and children. Punishment for acid attacks has reportedly been made stiffer. Preventive measures, including awareness raising, training of specialized groups and rehabilitation programmes, have been introduced. A special squad of the Criminal Investigation Department (CID) has been specifically mandated to investigate acid attacks. In regard to the individual cases, the Government indicated that the first reported incident involved a long-standing family feud between two neighbours, Mr. Kartik Chandra Sana and Mr. Sanjoy Kumar Das, in Ghugumari village of Satkhira district. On 18 July 2000 **Sanjoy Kumar Das** was reportedly attacked with acid by Kartik Chandra Sana and his wife, Bonita Rani Sana. A case was lodged with the local police station the same day and both the accused were arrested. The case is now under investigation. The Government reported that no report concerning the victim **Bhancha Sana** had been found. They suggested that the name of Bonita Rani Sana, one of the perpetrators in the Sanjoy Kumar Das case, might have been mistakenly reported as that of a victim, Bhancha Sana.

9. The Government indicated that on 1 August 2000, Mr. Tizamuddin lodged a case with Kishorgonj police station under the Women and Children Repression Prevention Act. The accused persons had been arrested and subsequently released on bail. The case is now under further investigation. **Fatima Begum** is undergoing treatment in a hospital in Dhaka.

10. The Government reported that on 31 July 2000, **Shah Alam** of Nandigram, Bogra, was reportedly attacked with acid by unknown persons. Further inquiry into the allegation revealed that it was not acid but some other substance, and that Shah Alam did not sustain any serious

injury. No case has been lodged with the police either by the victim or the victim's family. However, four persons were arrested by the police as suspects. In the absence of substantive proof, they were later released. The victim, Shah Alam, is reportedly presently in good health.

Canada

11. On 9 August 2000 a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the human rights of migrants was sent in regard to **Anam Iqra**, a Pakistani citizen who had sought refugee status in Canada. According to information received, her mother was murdered by her father for not conforming to the traditional practices of her family. After her mother's murder, Ms. Iqra was allegedly confined and tortured by her brother. It is reported that her family threatened to kill her in case of any protest. Ms. Iqra ran away from home and was hiding in different places, pursued by her brother and male members of her family who threatened to kill her. She was helped to escape to the United States from where she went to Canada.

12. According to information received, Ms. Iqra was at risk of being deported from Canada to Pakistan. The Special Rapporteurs expressed their concern about her fate in Pakistan should she be deported. Perpetrators of "honour killings" in Pakistan have so far not been punished for murder, giving them virtual impunity. The Special Rapporteurs appealed to the Government to refrain from deporting Anam Iqra to Pakistan.

13. By letter dated 28 November 2000 the Government responded regarding the case of **Anam Iqra**. According to information received from the Department of Citizenship and Immigration, Ms. Iqra had entered Canada from the United States on 12 July and was determined eligible to be considered as a refugee on 25 July. On 7 September 2000, she obtained an employment authorization, so that she could work while the refugee determination process continued (it currently takes eight months for a refugee hearing to take place and a decision to be made). It was reported that no decision had been made to deport Ms. Iqra and that her claim to be a refugee had not yet been decided. The Government stated that it would update the Special Rapporteurs on the outcome of the case as soon as possible.

Follow-up to previously transmitted communications

14. By letter dated 18 April 2000 the Government responded to the Special Rapporteur's communication dated 6 August 1999 concerning the case of **Jonathee Wannasri** (see E/CN.4/2000/68/Add.1, para. 31). The Government indicated that by decision dated 10 August 1999 the Convention Refugee Determination Division (CRDD) determined that Ms. Wannasri was not a Convention refugee. Ms. Wannasri was apprised of her right to apply for judicial review of the decision with leave of a judge of the Federal Court. She did not exercise this right. Ms. Wannasri was removed from Canada on 2 September 1999.

China

15. By letter dated 19 January 2001 the Special Rapporteur communicated her grave concerns in regard to information received concerning the alleged use of violence against women in China and in particular the ill-treatment of female Falun Gong practitioners. According to

information received the Chinese authorities have been conducting a major crackdown on the Falun Gong, Falun Dafa and other Qi Gong groups. The vast majority of Falun Gong practitioners are women. A ban was imposed on the Falun Gong on 22 July 1999 as "constituting a threat to social and political stability". Practitioners are said to be put under pressure to renounce their beliefs. Thousands are said to have been detained by police; many of them are said to have been sent to labour camps for "re-education" through labour, or detained in psychiatric hospitals and administered drugs against their will. Many of them are said to have suffered torture or ill-treatment. The methods of torture used against women practitioners have included: stripping them naked; severe beatings with fists or a variety of instruments, such as wooden batons, on shinbones, thighs, shoulders and other parts of the body; kicking; the use of electric shock batons, inter alia to the genitals, armpits, soles of the feet and the mouth; the use of handcuffs, shackles or ropes to tie prisoners in ways which cause intense pain; suspension by the arms or feet, often combined with exposure to extreme cold or heat; the use of cigarette lighters to burn their bodies; the insertion of sticks or needles under the nails or having fingernails pulled out by pliers; the insertion of pepper, chilli powder or other substances into the mouth, nose or genital organs; the use of injections which cause victims to become mentally unbalanced or to lose the ability to speak coherently. It is further alleged that many women practitioners have died following torture or medical neglect in detention. It is also reported that many women practitioners have died by falling out of windows whilst trying to escape.

16. In that connection, the Special Rapporteur has received information on the individual cases summarized below:

(a) In October 2000 prison guards in the **Masanjia prison in Shenyang, Liaoning province,** allegedly stripped 18 female Falun Dafa practitioners and put them into cells containing male convicted criminals. It is reported that Luo Gan, a high-ranking Communist Party official, was aware of the incident. The 18 women are said to remain in prison;

(b) It is reported that since October 1999, more than 1,500 Fallen Dave practitioners have been detained in the **Masanjia labour education camp** in Liaoning province. Practitioners are reportedly forced to denounce Falun Dafa. People who refuse to do so are allegedly subjected to physical abuse, shocked with electric batons, detained in solitary confinement and assigned intensive labour. The electric batons are used to shock the breasts and genitals of the female practitioners. The camp officials also allegedly force practitioners to drink dirty water from an abandoned well; practitioners reportedly all showed symptoms of poisoning after they drank the water;

(c) According to information received more than 50 female Falun Dafa practitioners were detained in **Qiaozhuang detention centre**, Tongzhou district, a suburb of Beijing, in July 2000. It is reported that after police had failed to force the practitioners to renounce their beliefs, using tortures and insults, most of practitioners were sent to labour camps and some were sent to psychiatric hospitals. In particular, the Special Rapporteur has received information concerning the following individual cases:

(i) **Huang Xiuling**, aged 59, from Fuma village, Majuqiao town, Tongzhou district, Beijing, was reportedly sent to Qiaozhuang detention centre in the afternoon of 30 June 2000, and was detained in cell 9. She refused to

recite the prison regulations and continued to practice the exercises. She was allegedly beaten, handcuffed and shackled. Her jailers reportedly used electric shock batons on her body and stomped on her feet. They held her breasts and pinched the tips of her nipples, and kicked her genitals. Huang went on a hunger strike to protest. According to information received, on the afternoon of 2 July 2000, she was sent to cell 7. The police allegedly force-fed her through her nose with a tube. Police wanted her to pay 10 yuan for the single-use of the disposable tube. As she didn't have any money, the police left the tube in her body so that they could use it again. In the evening, the pain became unbearable and she pulled the tube out. The next day, when she was force-fed again, the police handcuffed her from behind. After the force-feeding, the police allegedly left the tube in her body, one end in her stomach and the other end in her nose and pasted on her face so that she could not pull it out. That evening, Huang Xiuling reportedly developed a high fever. She was given medicine, but her fever didn't drop and she started vomiting. It is alleged that when the police realized that Huang Xiuling's life was in danger, they hastily sentenced her to one year of forced labour. Later that evening, they sent Huang Xiuling home and asked the village committee to watch her. After she returned home she recovered. On 13 July 2000, the police took Huang Xiuling away again and sent her to the fourth team of Beijing Tiantanghe female labour camp for forced labour. It is reported that Huang Xiuling went on hunger strike. She was allegedly tortured by the guards, injuring her neck;

(ii) **Liu Xuebin**, aged 54, from Chengguan town, Tongzhou district of Beijing, was reportedly arrested on 4 September 1999 while she practised Falun Gong exercises at the Tongzhou Club. She was detained for three months without any legal procedure. Liu Xuebin reportedly experienced several kinds of torture in the detention centre. The guards stripped off all her clothes and used a wet towel with salt on it to thrash her, continuing to add salt to the wet towel as they beat her. The towel left rows of small bleeding sores all over her body. The salt stuck to the sores and made them very painful. On the second day, bloody pus oozed out of her wounds and her clothes stuck to her body. As Liu Xuebin refused to answer questions during a police interrogation, she was labelled mentally ill, upon which she was sent to a mental hospital. Liu Xuebin was kept with the most seriously ill patients. She was forced to take pills and receive injections. She was released after three months. On 25 April 2000, Liu Xuebin appealed for the right to practise Falun Gong again. As a result, she was sent back to the mental hospital. Her family and friends do not know anything about her current situation;

(iii) **Li Yaping**, aged 26,was reportedly detained in Qiaozhuang detention centre, because she would not denounce Falun Dafa. Her hands were handcuffed behind her back and her feet were shackled. Jailers allegedly stuck an electric shock baton in her mouth until it bled. She was subjected

to different kinds of torture. Later she was sent to the fourth team of Beijing Tiantanghe female labour camp, reportedly without a trial.

(iv) **Hu Shufang**, aged 38, from Tongzhou district of Beijing, appealed to the Government on behalf of Falun Gong on 25 June 2000. She was detained in the west room in Qiaozhuang detention centre. She was allegedly beaten almost every day and shocked with electric batons, which left wounds all over her body. She was handcuffed and shackled. One month later Hu Shufang was sent to a labour camp without a trial;

(v) The police reportedly also took **Hu Shuwen**, sister of Hu Shufang, away from her home. She is currently detained in Tuanhe labour camp, Daxing county, Beijing;

(vi) On 6 October 2000, Falun Gong practitioner **Yan Juying** from Yanjiao, Sanhe city, Hebei province, went to Tiananmen Square to appeal on behalf of Falun Gong. She was arrested and sent back to Yanjiao police station. It is reported that before she got out of the car, the police captain, Yang Xizhong, started to kick her, beat her, pull her hair, slap her face and kick her private parts. Then he lifted her up and violently threw her to the ground. He allegedly beat her on the buttocks several hundred times with a wooden rod, whipped her numerous times, subjected her to electric shocks all over her body, used a slipper to slap her face, put an electric baton in her mouth, spat on her face and stomped on her heels. He allegedly threatened to splash her body with boiling water. When Yan Juying refused an order to take off her clothes, Yang Xizhong allegedly threatened to find some workers to rape her. He then sexually molested her. After some time Yang Xizhong recorded the interrogation and beat Yan Juying again. That night, Yan Juying was sent to the town government hall to attend the "transformation class";

(vii) **Tang Xi Tao**, aged 64, from Guangzhou, Canton, was arrested on 6 July 2000 and was transferred to the Cha Tou detention centre for women (also called Xiao Dao) in Canton, province of Gangdong. Tang Xi Tao was sentenced to two years' re-education through labour. It is reported that she has been subjected to torture and ill-treatment. She is allegedly placed in solitary confinement for days at a time, verbally threatened, her hands have been bound to prevent her from practising Falun Gong exercises, she is not allowed access to medical treatment for her illness and is subjected to forced labour as part of the re-education programme. Furthermore, as a result of the judgement her pension has reportedly been stopped and her apartment and personal belongings confiscated;

(viii) **Xie Guiying,** aged 32, from Huinan, Anhui province. According to information received, at 20.00 hours on 17 October 2000 Xie Guiying's home was ransacked by police from Chaoyang district police station,

Huainan, who allegedly beat her up before taking her to the police station. In the early morning of the next day, she was sent to the People's Hospital of Huainan because of serious injuries. She died at approximately 10.00 hours on the morning of 18 October 2000. At 16.00 hours the same day the police sent her body to the Datong Funeral Home. According to reports, in an apparent effort to cover up the details of the case, it was later reported by the Chaoyang district police station that she had committed suicide by jumping off a building;

(ix) **Wang Youju**,, aged 64, from Dalian, Liaoning province. On 22 July 2000 Wang Youju was reportedly taken away from her home by police from the Gongji police station of Dalin and was sent to Wafangdian detention centre in Dalian. She was allegedly forced to work long hours every day and was frequently denied food and sleep if she could not finish her quota. On 31 July 2000 Wang Youju and a few other Falun Gong practitioners were released. She was very weak and required assistance to walk, her chest hurt and she could not even stand. She was given emergency treatment in the office of the detention centre, but reportedly died that night;

(x) **Hao Yafen** from Sanhe, Hebei province. Liu Yalu and Qi Xiaoquan from Yanjiao police department allegedly beat and kicked Hao Yafen who had gone to Beijing to appeal peacefully for the right to practise Falun Dafa. She grew dizzy from the beating and lost her vision. After she fainted, they reportedly used an electric baton to shock her. She was hit with a shoe and kicked in the knees. On 13 July 2000 she was fired from the Communist Party committee of Sanhe power plant. She was also asked to pay a fine of 5,000 yuan renminbi by the police. In order for her to be allowed to return home her family gave Zan Qingcai, head of Yanjiao Police Department, 2,000 yuan renminbi. It is reported that Liu Yalu also extorted 1,000 yuan renminbi from them. He said it was to pay Beijing officials. Hao Yafen's work unit deducted her wages and bonus;

(xi) **Xu Wenjun** was reportedly arrested in November 1999. She was detained at three different locations. At the First Detention Centre of Nanchang, she started a hunger strike to protect her Falun Gong books. She was reportedly beaten by the guards and her hands and feet were shackled together. As a result she could not take care of herself, nor could she walk or sleep. Later, Xu Wenjun was transferred to the Second Detention Centre where she started a second hunger strike because her detention period was eight months longer than that stipulated by law. Her family finally bailed her out after 10 days. Xu Wenjum was arrested again less than one month later. She was reportedly sentenced to three years' imprisonment on 1 September 2000;

(xii) **Huang Liqiong** was reportedly arrested after going to Beijing to appeal for Falung Gong on 25 October 1999. She was detained in the Third

Detention Centre of Nanchang, Jiangxi, for 24 days. According to reports she has been detained three times in one year. Finally she was sentenced to three years of forced labour;

(xiii) **Chen Ying**, aged 18, from Jiamusi, Heilongjiang province, went to Beijing to appeal to the central Government at the beginning of August and was arrested. According to information received, during the journey back to Heilongjiang, the police allegedly threatened and tortured her. She was reported to have jumped off the train and killed. The family were informed on 25 October 1999;

(xiv) On 27 September 1999 **Zhao Jinhua**, aged 42, from Zhaoyuan city in Shandong province, was reportedly arrested by the Zhangxing county police, together with four other Falun Gong practitioners, **Wang Fenglan** from Yujia village in Shiduitou, **Ma Yufeng** from Xiaojiajia and **Zhan Keyun** and **Wang Haohong** from Heya village. All five were detained in the same room of the local police station. They were reportedly tortured by the policemen for refusing to denounce Falun Gong. They were deprived of sleep. On the night of 1 October 1999, policemen reportedly came in and began to beat the prisoners with fists and with rubber clubs. They allegedly struck Wang Fenglan with the club, wrapped her up with a telephone cord from an old-style rotary telephone and sent current through the line until she lost consciousness. They allegedly hit Zhao Jinhua with a rubber club, then dragged her to the office and shocked her with the telephone. As she was being tortured, they repeatedly asked her if she would stop practising Falun Gong. Zhao Jinhua fainted and she was taken to a local hospital for emergency treatment, after which she was taken back to the police station. It is reported that Zhao Jinhua felt pressure in her chest and the right side of her body felt numb. She felt a great deal of pain all over her body. There was blood in her urine, pain in both of her legs, and she was unable to eat. Her body was black and blue from the waist down. The police reportedly did not take any further action to help her. At 16.00 hours on 7 October 1999, Zhao Jinhua fainted again. The police took her to the emergency room at the local hospital; but she stopped breathing while medical personnel were doing an electrocardiogram. According to information received, the autopsy report showed that there were multiple wounds on her body and subcutaneous bleeding. The report concluded that she had died from being beaten with a blunt object. According to information received, the perpetrators were not punished. Instead, the authorities reportedly investigated those practitioners who had disclosed the death of Ms. Zhao to the public. On 20 November 1999, practitioners Li Nanying and Chen Shihuan were sentenced to three years of forced labour education allegedly for revealing the truth of Ms. Zhao's death to the public;

(xv) **Dong Buyun,** aged 36, from Lanshan district, Linyi city, Shandong province. Dong Buyun went to Beijing to appeal on 20 July 1999. She

was reportedly arrested in Beijing and escorted back by the police of Lanshan district on 20 September 1999. She was placed in the custody of the school where she worked, and detained in an office on the second floor. She was told to denounce Falun Gong but she refused. On the second day, her family was informed that she had jumped out of the window and had been killed. Her body was cremated before noon;

(xvi) **Chen Zixiu**, aged 59, from Beiguan Xujia Xiaozhuang, Weicheng district, Weifang city, Shandong province. She was picked up at Weifang railway station on the way to Beijing to make an appeal to the authorities. She was taken to Chenguan subdistrict office in Weicheng city and detained there for "re-education". Chen Zixiu allegedly died in custody at Chenguan subdistrict office and her body was transferred to the municipal hospital at 9.00 hours on 21 February 2000. At 19.30 hours, the public security summoned her family to Jinhai Hotel in Weifang city and confined them there. The family was allowed to see the body on 22 February. According to reports Chen Zixiu's mouth was stained with blood, her teeth were battered and broken, her abdomen distended. Her lower body bore massive bruises, and her legs were also swollen;

(xvii) **The mother of Fu Xiaojuan**, aged 56, from Gaoan, Jiangxi province, went to Beijing on a tourist trip on 14 September, 1999 and was arrested at her hotel in Xida (or Xidan) Street. She was detained in the Liaison Office of Yichun, Jiangxi province, in Beijing. It is reported that in order to avoid prosecution she tried to escape through the window at 3.00 hours on 16 September 1999, fell and was killed;

(xviii) **Yu Xiangme**, aged 35, from Changshou county of Chongqing, Sichuan province, went to Beijing to appeal, was arrested in early November 1999 and detained at the Chongqing Liaison Office in Beijing. She tried to escape through the window, fell and was killed;

(xix) **Li Guihua**, aged 47, from Jiangbei, Jiangbei district of Chongqing, Sichuan province. She went to Beijing to appeal and was arrested in late October 1999. She reportedly died while in detention in Chongqing Liaison Office in Beijing. The police department informed her husband and he went to Beijing to identify her and then her body was cremated. It is reported that the police threatened her husband not to reveal any information about her death;

(xx) **Gong Baohua**, aged 35, from Liudian village, Pinggu county, Beijing, went to Beijing on 17 June 2000 to appeal for Falun Gong and was reportedly intercepted by police at Dongzhimen bus station, along with seven other Falun Gong practitioners. After they were taken back to the local police station, six of them were allegedly brutally beaten by police. Among them, Ms. Gong suffered the most. Medical examination in Yukou clinic afterwards showed that the bridge of her nose was broken.

The police sent Ms. Gong and other practitioners to the county detention centre. To defend their rights, Ms. Gong and other practitioners went on a hunger strike. On 25 June 2000 at around 20.00 hours the guards allegedly force-fed Gong through her nose, despite the fact that it was broken. According to reports, after returning to the cell, her face was pale, her chest felt numb and she suspected that the guards might have inserted the feeding tube incorrectly during the force-feeding. About 10 minutes later, she lost consciousness. Her inmates are said to have called the guards, but nobody answered. After some time Gong regained consciousness. Guards finally came and took Gong for emergency treatment. She was sent back to detention on the morning of 26 June 2000, where her condition continued to deteriorate. On the morning of 27 June 2000, other inmates urged the guards to take Ms. Gong for another medical examination. At around 10.00 hours, the detention centre clinicians agreed to send her to the hospital. At around 21.00 hours that evening, Gong Baohua was pronounced dead in the hospital;

(xxi) **Zhang Yuzhen**, aged 46, of Hegang city, Heilongjiang province. At the beginning of February, the local police reportedly detained Ms. Zhang in Lulinshan detention centre in Hegang city, in order to prevent her from going to Beijing to appeal for Falun Gong. In April, she was transferred to the first detention centre of Hegang city. Ms. Zheng went on hunger strike for five days and she was beaten many times while in custody. She was released at the beginning of May, allegedly because she was very ill because of the long-term mistreatment in the detention centres. She reportedly had to stay in bed after she was released, and died on 20 June 2000;

(xxii) **Sun Shuqin**, aged 58, from Hegang city, Heilongjiang province. In January 2000, Ms. Sun and another practitioner went to the Beijing Public Security Ministry to appeal for Falun Gong. On 24 January 2000, she was reportedly sent to the Hegang detention centre. On 14 February, she was transferred to the Yingbei county jail. She went on a hunger strike for four days in April. She reportedly died in custody in the Yingbei county jail on 27 April 2000;

(xxiii) **An Xiukun**, aged 49, from Hengshui city. An Xiukun was reportedly removed from her post and was fined 2,800 yuan renminbi for practising Falun Gong. According to information received, An Xiukun went to the Beijing Public Security Ministry to appeal on 21 May 2000. She was escorted back and detained in the Education Committee Guest House. On 24 May, An Xiukun was given 15 days of administrative detention. An Xiukun refused to sign the paperwork for her detention, and declared that she would reserve her right to appeal. She was sent to the Lubei Administrative Detention Centre. On 25 May, the second day of her detention, An Xiukun was cuffed with a special type of handcuff nicknamed "bull's nose", for refusing to copy the rules of the detention

centre. An Xiukun started a hunger strike. On 6 June, An Xiukun lost consciousness. At 22.00 hours, An Xiukun was sent to the county hospital where she died at 7.30 hours on 11 June 2000;

(xxiv) **Miu Qun**, from Qu county, Dazhou city, Sichuan province. Miu Qun went to Beijing to appeal for Falun Gong in January 2000. She was reportedly taken back by local police and detained in the local detention centre. While in custody, she went on a hunger strike to defend her right to practise Falun Gong. The police force-fed her through the nose via a plastic tube. During the process of force-feeding, the police allegedly inserted the tube into her lung by mistake. She died shortly afterwards in custody;

(xxv) **Yin Shuyun**, aged 46, from Changchun city, Jilin province. During the annual session of National People's Congress, Ms. Yin went to Beijing to petition the Government to stop persecution of Falun Gong. She reportedly died in detention at the Heizuizi labour camp due to ill-treatment;

(xxvi) **Yao Baorong**, aged 52, from Anning district, Lanzhou city, Gansu province. Ms. Yao was arrested on 17 May 2000 at home. It is reported that she died in custody in the afternoon of 19 May 2000. The cause of her death was unclear. It was said that she died after falling from the fifth floor of the local police station. It is reported that the police cremated her body secretly at 2.50 hours on 23 May 2000. To block the news, the police allegedly arrested 20 practitioners;

(xxvii) **Mei Yulan**, aged 44, from Chaoyang district, Beijing. On 13 May 2000, Ms. Mei was arrested while practising Falun Gong exercises outside her house. She went on a hunger strike to defend her rights. On 17 May 2000, three days into her hunger strike, she was allegedly force-fed by another inmate who had no medical skills. After she got back to her cell, she said she had a headache and she started to vomit blood. The guard, whose surname was Sun, allegedly refused to send her for emergency treatment. She died in custody on 23 May 2000. Five practitioners who knew the circumstances of her death were reportedly sent to the detention centre on 26 May;

(xxviii) **Wang Xiuying**, aged 45, from Harbin city, Heilongjiang province. On 13 May 2000, Ms. Wang was arrested as she was practising Falun Gong exercises in Tiananmen Square. She was reportedly detained in the Jiaomen detention centre of Chongwen district. According to information received, after three days of hunger strike, four men pushed her to the ground and force-fed her through the nose. She was force-fed with high-density salt water five times within nine days. On 22 May 2000, she lost consciousness and died in custody at 19.00 hours that day;

(xxix) **Sun Xiuqing**, in her 50s, from Hegang city, Heilongjiang province. Ms. Sun was reportedly detained in the Luobei detention centre before the Chinese New Year (4 February 2000). She died suddenly at the end of April 2000 in custody. The police allegedly cremated her body immediately without informing her family;

(xxx) **Li Yanhua**, aged 45, from Nanchang city, Jiangxi province. Ms. Li had gone to Beijing twice in October 1999 attempting to petition the regime to stop its persecution of Falun Gong practitioners. She was reportedly detained for 10 days and later, she was detained again for more than one month. After that, she was sentenced to two years of forced labour on 7 January 2000 without a trial, and was detained in the Women's Drug Treatment Centre (also called labour camp) of Nanchang city. Li Yanhua and other detained practitioners started a hunger strike. Later, the camp guards tied them up and took them to hospital. According to information received, the medical examination showed that Li Yanhua was in serious condition. Her internal organs were atrophied and damaged. The labour camp informed her family to come and pick her up. Li Yanhua died at around 18.00 hours on 13 April, within two hours of arriving home;

(xxxi) **Zhang Shuqi**, aged 52, from Xicheng district, Beijing. On 26 December 1999, Ms. Zhang was reportedly arrested when attempting to attend the trial of four Falun Gong members at the Intermediate People's Court of Beijing. She was sent to Chang-qiao police station. The next day, she was transferred to the detention centre of the Xi-cheng police department. On the afternoon of 14 January 2000, the police station suddenly informed her family members to come and pick her up. After returning home, Ms. Zhang fainted, vomited and lost consciousness. She was immediately sent to the Beijing University Hospital for emergency treatment. However, she could not recover and died at 21.50 hours on 15 January;

(xxxii) **Zhu Shaolan**, aged 50, from Jinzhou, Liaoning province. On 28 September many practitioners in Jinzhou, collected signatures for a letter appealing for their freedom to practise Falun Gong. It is reported that as a result, many were arrested. To voice their concerns over the injustice, more than 40 practitioners started fasting on 29 September. Ms. Zhu was one of them. She became very weak two days later and started vomiting on the fourth day. The Raoyang local police sent her to the hospital on 5 October, and she died in the hospital in the morning of 7 October 1999;

(xxxiii) **Au Xiangmei**, aged 35, from Changshou county of Chongqing, Sichuan province. She was arrested in Beijing in November 1999 and was detained afterwards in the Chongqing Liaison Office in Beijing. It is reported that while trying to escape through a window, she fell and died;

(xxxiv) **Xia Wei**, aged 43, from Guanyinqiao, Jiangbei district of Chongqing, Sichuan province. She went to Beijing to appeal and was arrested in early November 1999 and was detained afterwards in the Chongqing Liaison Office in Beijing. She reportedly tried to escape through the window, but fell and died. Police allegedly told her husband not to reveal any information about the case.

17. According to information received, on 6 May 2000, 12 practitioners were sent to the Mental Hospital of Jiaozhou (also called Jiaozhou Psychological Recovery Centre), located at Yangzhou Road, Jiaozhou, Shandong province, for having gone to Beijing to appeal or continuing to practise Falun Gong. On 6 October 2000 a few were released but the majority are still reportedly being detained in the hospital. According to reports, they would only be released if they pledged that they would not appeal for Falun Gong, would not practise Falun Gong any more, and pay a fine of several thousand yuan. Reports have been received of various forms of ill-treatment including being forced to take medicines and receive injections, after which the practitioners would feel weak. They were also reportedly given electric shock treatment. In particular, the Special Rapporteur has received information concerning the following individual cases:

(a) **Zhou Caixia.** It is reported that after being on hunger strike for four days in the detention centre of Jiaozhou, she was taken to the mental hospital on 4 June 2000. She was allegedly forced to endure shots, medicines and other treatment designed for treating mental patients;

(b) **Kuang Bencui.** On 14 February, Ms. Kuang went to Beijing to appeal for Falun Dafa. According to information received, she was arrested and sent to the Jiaozhou Liaison Office in Beijing and detained for one night. The next morning, her work unit in Qingdao took her to the mental hospital of Jiaozhou city. Ms. Kuang was reportedly detained in the mental hospital for two months and had been treated like a mental patient. She was allegedly forced to take medicine and have injections. She was force-fed three times a day, with the dosage increased from one tablet a time to six tablets a time. After two months, her family members bailed her out;

(c) **Tan Guihua.** According to information received, on 12 September 1999, Ms. Tan went to Beijing to appeal for Falun Gong. On her return officers from her work unit and the Politics and Law Commission broke into her home and took her to the mental hospital of Jiaozhou. As Ms. Tan refused to take an injection, a nurse and eight mental patients held her down and gave her the injection. She was reportedly asked daily whether she would continue to practise Falun Gong. When she replied in the affirmative the doctor gave her electric shock treatment. For a two-month period she was reportedly force-fed with medicines and given injections three times a day. It is alleged that the doctors also experimented on her with a new imported drug which had various side effects. Inter alia, she stopped menstruating and suffered memory loss.

18. It is reported that at the beginning of December 1999, under a variety of fabricated charges, policemen from the Chengguan police station in Fangshan district of Beijing arrested 52 Falun Gong practitioners, the majority of whom were women, including:

Liu Wen (sex unkown), Wang Shuzhen (female), Chen Shumei (female), Yang Xuehua (unknown), Yang Xiuru (female), Liu Shengzhi (unknown), Xu Shufen (female), Wang Yingyuan (female), Zhang Yuzhen (female), Zhang Shihong (female), Cao Xiufen (female), Ren Shufen (female), Bai Xiulian (unknown), Jiang Xianglian (female), Su Fengxia (female), Yang Fenglian (female), Liu Yuxiang (female), Zhao Guomin (unknown), Jiang Shufen (female), Li Wanfeng (unknown), Shi Zhiguo (male), Hu Yajing (female), Song Zhenlan (female), Cui Hongxia (female), Liu Shuying (female), Yu Huanfeng (female), Li Xiujuan (female), Fan Xiuzhen (female), Zhang Cuihua (female), Li Huixin (unknown), Xu Hemin (male), Su Xiurong (female), Chen Shuling (female), Niu Shuzhen (female), Jiang Jingfang (female), Liu Chunhua (female), Liu Fengxia (female), Wang Xiuhui (female), He Guizhen (female), Yang Shufang (female), Liu Zhixia (female), Li Ruilian (female), Li Huiyun (unknown), Cui Xiuzhen (female), Liu Shuxin (female).

19. It is reported that the police station sent all of them to the Zhoukoudian Psychiatric Hospital, Fangshan district, Beijing, without any legal or medical procedures, allegedly in order to prevent them from going to Beijing to appeal during the period of the return of Macau to Chinese rule. They reportedly demanded every practitioner to pay between 800 and 1,000 yuan renminbi. It was said that it was up to the chief police officer in the police station when these practitioners were to be released. All 52 practitioners were reportedly released on 21-22 January after their family members paid the money.

Observations

20. The Special Rapporteur recognizes that there has been insufficient time for the Government to respond to her letter of 19 January 2001.

21. The Special Rapporteur notes that the Special Rapporteur on the question of torture, by letter dated 10 August 2000, transmitted individual cases of torture of female Falun Gong practitioners to the Government.

Cuba

Follow-up to previously transmitted communications

22. Concerning the case of **Michele Annemarie Malcolm** and **Rachel Georgina Magee** referred to in the Special Rapporteur's mission report (E/CN.4/2000/68/Add.2, paras. 63-65), the Government responded, by letter dated 16 March 2000, that both were arrested on 16 November 1998 while attempting to smuggle drugs to the United Kingdom. According to the birth dates on their respective passports, both detainees were 22 years old at the time of their detention. In accordance with the Vienna Convention on Consular Relations, the Government of Cuba informed the United Kingdom consular authorities in Havana of the arrest of two of its citizens. The Government stated that, at all times, consular visits were facilitated. Both detainees were sentenced to 15 years' imprisonment following a trial which the Government

stated respected all the guarantees contained in Cuban penal law. The Government stated that both women had indicated their wish to file a request for judicial review of their conviction, in accordance with the law on penal procedure.

India

Follow-up to previously transmitted communications

23. By a letter dated 3 March 2000, the Government responded to a number of cases transmitted by the Special Rapporteur with the Special Rapporteur on torture on 22 November 1999 (see E/CN.4/2000/68/Add.1, paras. 48-66).

24. Concerning **Bina Das**, the Government replied that the allegations made against the Border Security Force (BSF) personnel was baseless and that family problems had led to the death of Bina Das. In this context, two persons, Mohan Das and Bapuram Das, were arrested and detained.

25. Concerning **Kalpana Das Kakoti,** the Government responded that an inquiry had concluded that there was no evidence of the involvement of army personnel in the alleged rape. Villagers from Taregan Potasali had also submitted a petition to the District Administration denying the allegation.

26. Concerning **Tukeshwari Rava,** the Government replied that inquiries confirmed that she had been raped by two members of the Border Security Force on 14 January 1998. The case was registered with the Bongaigaon police station under the Indian Penal Code, and forwarded to the court on 13 July 1998. A magisterial inquiry was conducted into the incident, confirming the rape. The report was submitted to the government of Assam. The personnel involved in the rape have been suspended and will be tried by the BSF court.

27. By letter dated 28 March 2000 the Government responded to the Special Rapporteur's report (E/CN.4/2000/68/Add.1, paras. 43 and 47) concerning the case of **Raja Begum** and her daughter **Ghulshan Bano.** It indicated that the two women were called for questioning at Doda police station in connection with an incident in which two army personnel were seriously injured near Daree Marmat village. Army personnel, in the presence of four female constables, reportedly questioned them. During questioning they admitted that on 14 March 1999 four militants had visited their home and had a meal with them. On the basis of their revelation the soldiers, along with the police, raided the house of Raja Begum and found explosive material. Following this, Ms. Begum and her daughter were handed over to the police on 18 March 1999 and were subsequently arrested for their involvement in the above-mentioned incident. During the course of the investigation a female doctor at the Doda district hospital examined the women. Her report stated that no marks of violence were found on the women's bodies. A board of doctors also examined the women and in their report categorically stated that they found no signs of rape. Both women were remanded to judicial custody and were released on bail on 24 March 1999. During the course of the investigation the complainants did not allege sexual misconduct by any member of the army personnel. Razia Begum, the wife of Farman Ali, and

Shaheena Begum, wife of Abdul Qayoom, daughters-in-law of Raja Begum, made statements in which they denied the allegations. The government concluded that the investigation conducted reveals that the case lodged by the complainant is false.

28. The Government stated that on 20 May 1998, people demonstrating against the construction of Maheshwar Dam project stopped 24 trucks carrying cement near Gandhi Nagar village at Mandeswar, Mandeswar road. The police arrested a total of 130 women and 25 men, most of whom were released the same day and the remaining the next day. The police did not physically assault any of the demonstrators.

29. By letter dated 10 November 2000, the Government responded to the joint communication sent with the Special Rapporteur on torture on 22 November 1999 concerning the cases of **Dulumoni Devi, Tarulata Pagu, Santhali Bodo and Runumi, Mamoni Koch, Dimola Doimary, Anjali Basumatary, Monaishree Diamary, Nbiari Diamary, Lilawati Baishya** and **Bina Baishya** (see E/CN.4/2000/68/Add.1, paras. 48-66).

30. The Government stated that on 24 April 1997, on the basis of the presence of militants of the United Liberation Front of Assam in Ghumatigaon village, cordon and search operations were launched by the army. The army personnel obtained a "no objection" certificate from the elders of the village certifying that no atrocities were committed by the army. The allegation of the rape of Ms. **Dulumoni Devi** by army personnel during the operation is false.

31. The Government reported that preliminary investigations into the case of **Tarulata Pagu** had revealed the involvement of two sepoys of 7th battalion of the Sikh Regiment. Accordingly, summary general court-martial proceedings had been ordered. Based on the findings, suitable disciplinary action will be initiated against the perpetrators.

32. The Government reported that the case of **Mamoni Koch** had been investigated and revealed the involvement of a sepoy of the 25th Punjab. He was found guilty by the summary general court-martial, and sentenced to one year's imprisonment and has been dismissed from service.

33. Concerning **Santhali Bodo** and **Runumi**, the Government responded that on 21 May 1997, troops of the 16th Rajput were patrolling near Ambari villa when a member of the patrol was killed and his rifle stolen. Subsequently, the army searched the area. Villagers were gathered in Ambari and questioned about the whereabouts of members of the Bodo Liberation Tiger Force, including its leader. The army obtained a clearance certificate from village elders certifying that the children and women had not been harassed or maltreated by the army and that no atrocities had taken place. Following allegations of human rights violations by the army, the district magistrate ordered an inquiry. It reportedly found that the militant organization had falsified documents and had forced a government doctor to produce a medical certificate certifying the rape of the two girls. The General Officer commanding the formation ordered an inquiry into the allegations of rape, which was held in the presence of government and police officials, as well as representatives of the All Bodo Women Welfare Federation. The army court concluded that the allegations were baseless and aimed at tarnishing the image of the army. A petition has been filed by the All Bodo Student Union and the All Bodo Women

Welfare Federation in the Guwahati High Court alleging rape and molestation during army operations on 21-22 May 1997 in Ambari Tamulpora police station, to which the army filed a counter affidavit. The matter is still pending.

34. Concerning the cases of **Dimola Doimary** (aged 14), **Anjali Basumatary** (aged 16), **Monaishree Diamary** (aged 17), **Nbiari Diamary** and **Thengali Diamary,** the government reported that an army court of inquiry had investigated the cases of alleged incidents of rape on the nights of 9-10 March 1998 and 14-15 March 1998 and found that the rape allegations could not be established in any of the cases. The Government reported that the medical report did not substantiate the allegation of rape. One of the victims, Thengali Diamary allegedly denied being raped. Further, the Army did not conduct operations in those areas on the dates mentioned.

Indonesia

35. On 22 November 2000 a joint communication was sent with the Special Representative on human rights defenders, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Chairman-Rapporteur of the Working Group on Arbitrary Detention concerning information received about massive human rights violations occurring in the province of Aceh, in particular alleged acts of torture, including sexual violence, committed by the military and security forces against civilians, in particular human rights defenders, as well as peaceful pro-independence activists.

Iran (Islamic Republic of)

36. On 11 May 2000, a joint urgent appeal was sent with the Special Representative on the human rights situation in the Islamic Republic of Iran, the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on torture and on the promotion and protection of the right to freedom of opinion and expression on behalf of two human rights activists. **Mehrangiz Kar,** a lawyer, writer and scholar, **Shahla Lahiji,** publisher and editor, as well as a representative of the student organization Office for Strengthening Unity (Daftar-e-Tahkim-e Vahdat), Ali Afshari, are reportedly accused of "acting against national security"; they are believed to be detained in incommunicado detention. According to information received, Mehrangiz Kar's brother and lawyer requested to see her, but were denied access to her. The exact whereabouts of the three persons have not been confirmed thus far. Mehrangiz Kar and Shahla Lahiji were reportedly summoned for interrogation and detained by the Revolutionary Court on 29 April 2000. Following their interrogation, they were placed under arrest. **Ali Afshari** was reportedly detained on 30 April. They are believed to have been detained because of their participation in a conference in Berlin, held from 7 to 9 April 2000, entitled "Post-Election Iran", which had been organized by the Heinrich Boell Institute, and because of their advocacy of women's rights. Fears have been expressed that the above-mentioned persons may be at risk of torture or other forms of ill-treatment in view of the incommunicado nature of their detention in an unknown location and the fact that prolonged incommunicado detention can in itself constitute cruel, inhuman or degrading treatment. The Special Rapporteurs appealed to the Government to provide information about the case.

Israel

37. On 19 April 2000 a joint communication with the Special Rapporteur on torture was sent in regard to **Qozet Elias Ibrahim**, aged 25, a free-lance journalist from Rmeish (on behalf of whom the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Chairman-Rapporteur of the Working Group on Arbitrary Detention had intervened on 22 September 1999) and **Najwa Hosein Samhat,** aged 33, from Aynata. Both are said to be detained in Khiam detention centre. Ms. Elias Ibrahim was reportedly arrested on 2 September 1999 by Israeli security forces on the grounds of having been accused of preparing reports about the situation in the occupied territories. She is said to suffer from a severe ulcer/infection of the large intestine. According to the information received, she is constantly hooked to an intravenous drip in her cell because she is unable to keep any food in her stomach. Ms. Hosein Samhat was reportedly arrested with her husband, **Hussein Ahmad Samhat**, aged 38, a restaurant owner, and her 16-year-old son, **Ahmad Hosein Samhat**, on 29 September 1999; both are reportedly detained with her. According to the information received, Ms. Hosein Samhat has been subjected to whipping on her feet causing extensive bruising, blows to her face causing a cut lip, being hanged by her hair and having cold and hot water poured on her body by women police officers. Furthermore, she is reportedly continuously insulted and was subjected to psychological pressures, such as the threat of the kidnapping and killing of her child in the camp. She reportedly suffered a severe haemorrhage after having had a miscarriage while in detention, which is said to have been caused by the torture she has been subjected to in detention. Both Ms. Elias Ibrahim and Ms. Hosein Samhat were reportedly taken to hospital by Israeli forces and militiamen from the South Lebanese Army after their health conditions deteriorated, allegedly as a result of having been subjected to torture at Khiam. Serious fears have been expressed concerning the health and life of the above-named women if they do not receive appropriate and prompt medical treatment; further serious concerns have been expressed that all may be at risk of further torture or other forms of ill-treatment.

38. Further information has also been received on the presence of three other women in Khiam detention centre, namely **Asmahan El-Khalil** from Aychiya, who was reportedly arrested on 10 September 1999, **Chamlakan Hussein Assaf**, a 23-year-old nurse from Arnoun working in the clinic of Dr. Husein Toufaily in Nabatie who was reportedly arrested in Arnoun on 23 November 1999, and **Samira Hassan Attieh**, a 23-year-old saleswoman from Arnoun who was arrested at her parents' house in Arnoun on 23 November 1999. In the light of the above reports, fears have been expressed that they may be at risk of torture or other forms of ill-treatment.

Mexico

Follow-up to previously transmitted communications

39. On 24 May 2000, the Government, in response to letter dated 23 November 1999 concerning violence against women in Ciudad Juarez, and in particular the case of **Ceilia Guadalupe de la Cruz,** transmitted the following information to the Special Rapporteur (see E/CN.4/2000/68/Add.1, paras. 72-78).

40. Concerning the murder of Cecilia Guadalupe de la Cruz, the investigation undertaken led to an order for the arrest on 1 April of Jesús Manuel Guardado Márquez, alias El Tolteca, Bernardo Hernández Fernández, alias El Samper, José Gaspar Ceballos, alias El Gaspar, Victor Moreno Rivera, alias El Narco, and Agustín Toribio Castillo, alias El Kiani, members of a gang called Los Ruleteros or Los Choferes and presumed perpetrators of the crime. On 8 April 1999 a formal detention order was issued against the aforementioned men by Penal Judge No. 4 of the Thirteenth District Court of Morelos, under case No. 340/99 which is at the pre-trial stage. The men, characterized as being highly dangerous, are detained in the Chihuahua State Penitentiary. Concerning the murders of Argelia Irene Salzar Crispin, María Sagrario González Flores and Erendira Ivonne Ponce Hernández, subjects of the allegations of April and August 1998, the Chihuahua State Prosecutor reports that the case is at the investigatory stage and that the evidence gathered thus far suggests the involvement of members of the Los Ruleteros or Los Choferes gang who are already under indictment for the murder of Celia Guadelupe de la Cruz.

Nigeria

41. On 11 January 2001 a joint urgent appeal was sent with the Special Rapporteur on torture on behalf of **Bariya Ibrahim Magazu**, aged 17. Ms. Magazu was reportedly sentenced to 180 strokes of the cane by a sharia court in Tsafe, Zamfara State, in early September 2000 for allegedly having had sexual relations outside of marriage and for having falsely accused three men of raping her. The sentence was not carried out immediately as she was pregnant when sentenced. However, as she is believed to have had her child in December fears have been expressed that the sentence would be carried out on 27 January 2001. It is reported that lawyers had filed an appeal for a stay of execution. The Special Rapporteurs appealed to the Government to ensure that the right to physical and mental integrity of Ms. Magazu is protected.

Observations

42. The Special Rapporteur is saddened to learn that Ms. Magazu received 100 strokes of the cane on 19 January, after an initial sentence of 180 strokes was reduced. It is reported that the sentence was carried out despite the fact that an appeal was being prepared. The Special Rapporteur is concerned that women and girls who are the victims of rape or coercion could risk being subjected to charges of zina and false accusation if they report an assault. According to information received there were allegations that Ms. Magazu was raped, the court allegedly invoked the rule of requiring at least four witnesses to testify to this, however the court did not invoke the same rule on Ms. Magazu's behalf. The Special Rapporteur urges the Government to remove any gender discrimination that exists from the law and ensure that it is not in violation of international standards.

Qatar

43. By letter dated 23 October 2000 the Special Rapporteur informed the Government about the case of **Nayanta Pandita** and his wife, **Saleha Pandita**. According to information received, on 17 November 1999, Mr. and Mrs. Pandita were married at the Registrar General's Department in Colombo, Sri Lanka. Dr. Mohammed Ameerudeen, Saleha's father, objected to the marriage. It is alleged that he tried to assault the couple at the airport in Madras but the

police intervened. On 28 February 2000, Nayanta Pandita was called to court in Doha, Qatar, where the couple was residing. The marriage certificate was rejected and the couple was charged under Muslim law for living together without being married. They were both remanded in custody. Mr. Pandita was reportedly told the marriage would be valid only if he converted to Islam. Under duress, he signed the declaration accepting Islam. The couple was ordered to remain incommunicado for a period of three months. Saleha was given to her father and Nayanta told to study Islam; the judge said that he would reconsider the possibility of their marriage under Islamic Law if Nayanta proved to be a devout Muslim.

44. Nayanta met with officials of the Ministry of the Interior and Dr. Saleem and they agreed to a settlement. Nayanta left for Sri Lanka. While he was away, he violated the judge's injunction and called Saleha. The telephone conversations were recorded and Nayanta's father-in-law threatened to produce them in court and have Nayanta jailed if he returned to Qatar. Nayanta remains in Sri Lanka. Attempts at reconciliation through the good offices of the Sri Lankan Embassy have also failed. The Special Rapporteur expressed concern that Saleha Pandita is allegedly being held against her will and that her passport has been taken away.

Russian Federation

45. On 3 March 2000 a joint urgent appeal was sent with the Chairman-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on torture in regard to information received about massive human rights violations occurring in Chechnya.

46. The Special Rapporteurs expressed their concerns regarding allegations of extrajudicial executions and rape of Chechen women by Russian troops, arbitrary detention and torture in so-called "filtration camps", massive arrests without warrants and forced displacements of the civilian population. It was alleged that detainees were beaten, sexually abused, stripped naked and left in cold cells.

47. On 6 March 2000, a press release was issued by the Special Rapporteurs and the Chairman-Rapporteur on the situation referred to above.

48. On 7 August 2000, a joint urgent appeal was sent with the Special Rapporteur on torture in regard to information that numerous rapes took place during the course of the conflict. Federal army soldiers were said to be the perpetrators and they generally killed the rape victims. Such incidents are said to have occurred in Alkhan-Jurt, in December 1999; Shaly, in January 2000; and in Grozny, in February 2000. In particular, the Special Rapporteurs have received information on the following individual case.

49. **Colonel Budanov** and his soldiers allegedly kidnapped **Heda Kungaeva**, aged 17, from Tangi-Chu, during the night of 26 March 2000. On 28 March, they reportedly gave her body to the villagers. A medical expert is said to have concluded that before being killed she had been raped by several men. The General Prosecutor's Office started an investigation procedure on this case and on 30 March 2000 Colonel Budanov was arrested. He reportedly claimed that during interrogation he had been trying to make the girl confess her sniper activities and that in a state of insanity, he had killed her.

50. By letter dated 20 November 2000, the Government indicated that according to information from the Office of the Procurator-General of the Federation, the bodies of Said-Emin Giriev, Said-Hussein Giriev and Musy Musaevich Sugaipov were found in the village of Starye Atagi in the Chechen Republic on 16 June 2000. Criminal proceedings were accordingly instituted on 19 June under article 105, section 2a, of the Russian Criminal Code, and are reportedly being pursued by the procuratorial system of the Chechen Republic. It has not yet been established who committed the crime. The Government reported that on 27 March 2000 the Office of the Military Procurator of the Northern Caucasus Military Zone initiated criminal proceedings against Col. Y.D. Budanov, the commander of a tank regiment, in connection with the killing and rape of Heda Kungaeva (according to her papers, Elza Visaevna Kungaeva), an inhabitant of the village of Tangi-Chu. Col. Budanov had been charged with offences under articles 105, section 2c (homicide), and 286, section 3a (acting in excess of authority), of the Criminal Code. He has reportedly been placed in custody and is undergoing a psychiatric appraisal. The Government reported that on instructions from the Office of the Procurator-General, the procurators' offices in the Northern Caucasus military zone and the Chechen Republic are conducting inquiries into the remaining matters.

Sri Lanka

51. By letter dated 14 March 2000 the Special Rapporteur expressed her concern regarding cases of gang rape and murder of women and girls that are reportedly being committed by the security forces. In addition to rape cases in the North and East, she reported that she had received information about political violence in the South that has affected women victims.

52. On 14 March 1999 the Special Rapporteur also issued a press release in this regard.

53. The following information in regard to individual cases was transmitted:

(a) **Sarathambal Saravanabavanthakurukal**, aged 29, was reportedly gang raped and then killed by Sri Lankan navy personnel on 28 December 1999 in Pungudutivu, near the Jaffna peninsula. Her body was reportedly found the following morning under leaves not far from her home near Kannaki Amman Temple. According to reports received, apart from a few high-profile cases which have been investigated thoroughly and the perpetrators brought to trial, cases of rape and murder of women and girls by Sri Lankan military personnel have often gone unpunished. In this context the Special Rapporteur is encouraged that on 30 December 1999, President Chandrika Kumaratunga ordered an immediate investigation into the case. However, it is alleged that the suspects have been transferred from the area to avoid prosecution and that very little is being done to pursue the matter;

(b) **Ida Caremelitta** was allegedly gang raped by five soldiers and then killed during the night of 12 July 1999 in Pallimunai village on Mannar Island. Five masked and heavily armed men reportedly entered the house while her family were sleeping and took Ms. Caremelitta outside and violently raped and killed her. The post-mortem report indicates that Ms. Caremelitta had been repeatedly raped and her body had been sexually mutilated;

(c) On 6 October 1998 **Ms. Pushpamalar**, aged 12, was allegedly detained whilst returning from school and raped by a soldier in Sangathaanai, Chavakachcheri, east of Jaffna. Following the assault she was admitted to hospital;

(d) **Anoja Weerasinghe's** house was reportedly attacked on two separate occasions, on 24 December 1999 and 2 January 2000. The first attack was with stones and caused a few broken windows, the second attack was more severe and led to the burning down of a part of her house. Concern has been expressed that the two incidents are related to her political involvement over the last 22 years. Ms. Weerasinghe recently played the lead role in a film version of "The Trojan Women", an anti-war play. Her political involvement has also encompassed speaking in support of the United National Party and peacefully picketing in Veyangoda on 17 November 1999 to protest the physical attacks against actors and actresses. She has also participated in news conferences, one of which was on 18 January, immediately following the attack. The actors supporting the UNP also organized a picket line in Colombo on that day.

54. By letter dated 6 April 2000 the Government responded to the communication sent on 14 March 2000 concerning four cases of violence against women.

55. Regarding the case of **Saravana Bhawanandan Kurukkal Saaradambaal**, the Government stated that her brother had reported the murder to the Kayts police. On directions given by the Inspector-General of Police on 5 January 2000, investigators of the Criminal Investigations Department (CID) proceeded to Kyts, Jaffna, and took over the investigation which had been started by the Kayts police. The incident reportedly took place on 28 December 1999. At around 9.30 p.m., four armed men came to the house and took away the deceased. After the abductors left, the brother, with the assistance of the neighbours, searched the area, without success. Upon making a complaint to army personnel attached to a nearby camp, they too joined in the search. The following morning the complainant found the body of the deceased. The post-mortem examination showed that the deceased had been raped. There is no conclusive information relating to the identity of the perpetrators, but investigations are continuing.

56. Regarding the case of **Fareed Ida Carmaleeta Laila**, the Government reported that pursuant to instructions given to the Inspector-General of Police by the President on 15 July 1999, the CID commenced investigation into the alleged rape and murder of Fareed Ida Carmeleeta Laila. Investigations revealed that there was a prima facie case that she had been raped and murdered. A second post-mortem was conducted to obtain more accurate and scientific proof by a consultant forensic pathologist. Criminal investigations revealed that two armed persons had forced their way into the house of the victim. It is suspected that the intruders thereafter raped and murdered the victim. Eleven members of an army detachment in the vicinity of the victim's house were arrested and arraigned for an identification parade. Two of the soldiers were identified by witnesses as the two persons who went into the house of the victim on the day of the incident. They are Dayantha Upul Gurusinghe and Raja Somarantne. Upon identification of the two suspects, the magistrate remanded them in custody. They have been denied bail and are still in remand. The CID also found several pieces of cartridge from an

automatic firearm. The findings of the government analyst reveals that the cartridge had been fired from the firearms used by the suspects. The CID is continuing its investigation, and is due to seek the advice of the Attorney-General.

57. Concerning the cases of **Ms. Pushpamalar** and **Anoja Weerasinghe**, the Government responded that investigations were continuing and detailed reports would be submitted in due course. The Government stated that it paid particular attention to acts of violence being committed by armed forces and police personnel in areas affected by conflict. It indicated that it refutes the accusation that only a few high-profile cases had been investigated. The Government states that every case of alleged criminal conduct committed by the armed forces and police has been investigated and the perpetrators prosecuted, although there may have been unavoidable legal delays.

United Arab Emirates

58. On 9 March 2000 a joint urgent appeal was sent with the Special Rapporteurs on extrajudicial, summary or arbitrary executions and on the human rights of migrants on behalf of **Karteen Karikender**, aged 35, a documented Indonesian migrant worker in the United Arab Emirates. According to information received, Ms. Karikender took a job as a domestic helper in the city of Fujairah in February 1998. In 1999, she became pregnant and her employers accused her of adultery. She was handed over to the local authorities and delivered her baby while in detention. In 2000, she was summoned to face trial at the Syariah Fujairah Municipal Court, reportedly without any legal assistance and unattended by any translator/ interpreter during the local proceedings. The court found her guilty of adultery and sentenced her to death by stoning. The same court is said to have recently sentenced a Cypriot man convicted of battering his wife to death with a rock to four years in jail and 70 lashes. According to reports, the man responsible for the pregnancy was an Indian citizen whom the court acquitted in absentia, as he had disappeared without a trace. The case reportedly will be appealed to a higher court in Fujairah. If the sentence is upheld on appeal the case may be referred to the Federal Supreme Court in Abu Dhabi and thereafter to the President for ratification. The Indonesian Embassy to the United Arab Emirates had reportedly not been notified about the trial and only became aware of the case when the local mass media announced the death penalty nationwide. Article 36 of the Vienna Convention on Consular Relations, recognizes the right to communicate with and receive assistance from one's own consular representatives. The alleged failure to inform the defendant of this right may have deprived her of important assistance in the preparation of her defence. The Special Rapporteurs appealed to the Government for Ms. Karikender's death sentence to be commuted if upheld on appeal.

United States of America

59. On 2 February 2000 a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions was sent on behalf of **Betty Lou Beets** (aged 62) who was scheduled to be executed in Texas on 24 February 2000. According to reports received, she was sentenced to death in 1985 for the murder of her husband after a trial in which crucial mitigating evidence was allegedly never presented to the jury, including her history of severe physical, sexual and emotional abuse from an early age. According to reports received, she was raped at age 5, she first married at age 15 and was brutally beaten and sexually abused by a succession of

husbands. Expert testimony in post-conviction proceedings reportedly established that Betty Lou Beets suffers from post-traumatic stress disorder, battered women's syndrome and organic brain damage, due to the long history of abuse at the hands of her spouses. It is reported that the effect of this abuse on her state of mind and her actions was not taken into account when convicting and sentencing her for murder. The Special Rapporteurs appealed to the Government to refrain from executing Betty Lou Beets.

60. A press release was also issued by the Special Rapporteurs on 24 February 2000 in this regard.

61. By letter dated 23 February 2000, the Government responded concerning the case of Betty Lou Beets. It acknowledged that mitigating evidence of Ms. Beets's history of severe physical, sexual and emotional abuse was not presented in her defence at the trial. The Fifth Circuit Court of Appeals concluded that such evidence, even if presented, would not have had any impact on the jury's decision to sentence her to death. After sentencing, during habeas corpus proceedings in the federal district court, Ms. Beets raised the issue of "battered women's syndrome" in the context of her argument that she received ineffective assistance of counsel, however, it was rejected by both the United States District Court and Fifth Circuit Court which concluded that her attorney's decision not to pursue this line of argument was not unreasonable and that Ms. Beets did not demonstrate a reasonable probability that, had the evidence been presented, she would not have received the death sentence.

Appendix

CONFIDENTIAL

VIOLENCE AGAINST WOMEN

INFORMATION FORM

INFORMER: *name and address of person/organization submitting the information, will remain confidential. Please also mention whether we can contact you for additional information and if so by what means.*

Name of person/organization: _____

_____

Address: _____

Fax/Tel/E-mail: _____

VICTIM(S): *information about the victim(s) including full name, age, sex, residence, professional and/or other activities related to the alleged violation, and any other information helpful in identifying a person (such as passport or identity card number). Please mention whether the victim is willing for their case to be transmitted to the Government concerned.*

Name: _____

Address: _____

Date of birth: _____

Nationality: _____

Sex: _____

Occupation: _____

Ethnic background, religious, social group (if relevant): _____

THE INCIDENT: *including dates, place, and the harm suffered or to be prevented. If your submission concerns a law or policy rather than a specific incident, summarize the law or policy and the effects of its implementation on women's human rights.*

Include information about the alleged perpetrators: their names (if known), any relationship they may have to the victims and/or to the Government, and an explanation of the reasons why you believe they are the perpetrators. If you submit information about violations committed by private individuals or groups (rather than government officials) include any information, which might indicate that the Government failed to exercise due diligence to prevent, investigate, punish, and ensure compensation for the violations.

Include information about the steps taken by the victims or their families to obtain remedies including complaints filed with the police, other officials, or independent national human rights institutions. If no complaints have been filed, explain why not.

Include information about steps taken by officials to investigate the alleged violation (or threatened violation) and to prevent similar acts in the future. If a complaint has been filed, include information about the action taken by the authorities, the status of the investigation at the time the communication is submitted, and/or how the results of the investigation are inadequate.

Date: _____ Time: _____ Location/country: _____

Number of assailants: _____ Are the assailant(s) known to the victim? _____

Name of assailant(s): _____

Does the victim have a relationship with the assailant(s), if so what is the nature of the relationship? _____

Description of the assailant(s) (include any identifiable features): _____

_____

DESCRIPTION OF THE INCIDENT: _____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Does the victim believe she was specifically targeted because of gender? _____ If yes, why? _____

Has the incident been reported to the relevant State authorities? _____ If so, which authorities and when? _____

_____

Have the authorities taken any action after the incident? _____

If so, which authorities? _____

What action? _____

_____

When? _____

WITNESSES: Were there any witnesses? _____

Name/age/relationship/contact address: _____

_____

Please bring to the attention of the Special Rapporteur any information which becomes available after you have submitted this form. For example, please inform the Special Rapporteur if your human rights concern has been adequately addressed, or a final outcome has been determined in an investigation or trial, or an action which was planned or threatened has been carried out.

PLEASE RETURN TO
THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN
OHCHR-UNOG, 1211 GENEVA 10, SWITZERLAND
(Fax: 00 41 22 917 9006, E-mail: csaunders.hchr@unog.ch)

UNITED NATIONS **E**

Economic and Social Council

Distr.
GENERAL

E/CN.4/2001/73/Add.2
6 February 2001

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 12 (a) of the provisional agenda

INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE

VIOLENCE AGAINST WOMEN

Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, in accordance with Commission on Human Rights resolution 2000/45

Addendum

Mission to Bangladesh, Nepal and India on the issue of trafficking of women and girls (28 October-15 November 2000)*

---

* The executive summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission only.

GE.01-10865 (E)

Executive summary

At the invitation of the Governments of Bangladesh, Nepal and India, the Special Rapporteur on violence against women, its causes and consequences visited Dhaka, Kathmandu, Bhairahwa in Rupandehi district, Delhi, Bombay and Calcutta from 28 October to 15 November 2000, to study the issue of trafficking in women and girls in the region.

The present report is intended as a case study to complement the Special Rapporteur's previous report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68). It contains chapters on the definition of trafficking, the background to the problem of trafficking in South Asia, general findings, and more detailed chapters on each of the countries visited.

The Special Rapporteur was reassured that the Governments of Nepal, Bangladesh and India were politically committed to the eradication of trafficking in the South Asian region. She was concerned, however, that some of the national measures being contemplated to combat trafficking were in violation of basic human rights principles. She also impressed upon the Governments of the region the need to bring the proposed SAARC Convention on Trafficking into line with accepted international standards and agreed international language. The Special Rapporteur also engaged in a constructive discussion with Governments on possible initiatives at the level of the criminal justice system which could ensure an effective, targeted response to the problem of trafficking in the South Asian region. She also held discussions with various authorities on social welfare measures which could be taken to ensure that the rights of the women victims of trafficking were protected.

The Special Rapporteur makes the following recommendations in the report:

International

The international community must continue to play a proactive role in preventing trafficking in the South Asian region. More resources should be given to the Governments of the region to meet this problem of human servitude and forced labour. In this connection, the Nepalese effort should be replicated in the other South Asia Association for Regional Cooperation (SAARC) countries. There should be an inter-agency task force on trafficking or a joint initiative on trafficking involving all the international agencies. Cooperation among the agencies is essential if there is to be a coordinated effort to deal with the problem of trafficking in South Asia.

Regional

The countries of the SAARC region should join efforts to collect comprehensive data on trafficking. There should be a central database and a regional survey to assess the nature of the problems, the numbers involved, the profile of the trafficking victim, the profile of the trafficker and the response of national Governments. The collection of data is absolutely necessary if the problem is to be dealt with effectively.

A SAARC convention on trafficking should be encouraged. If the present draft convention for preventing and combating trafficking in women and children for prositution is signed, there should be a Conference of Parties held within a year to ensure that the definition of trafficking in the SAARC instrument is along the lines of the language of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

The social and economic rights of the victims should be respected. In addition, a monitoring mechanism should be set up along with a regional fund to help victims of trafficking once they are rescued.

There should be an intergovernmental regional task force on trafficking that will plan and implement a concerted strategy for the region. This task force could be linked to the Women and Child Ministries of the respective countries. In addition, there should be an interregional police task force to fight trafficking, track traffickers and gather intelligence on trafficking rings.

National

The Governments of the region should each have a national plan of action to combat trafficking. To prevent such a plan from being just a piece of paper, there should be a monitoring mechanism involving Government, non-governmental organizations and international agencies.

There should be a nodal agency entrusted with implementing the action plan. In some of the SAARC countries there is such a nodal agency for drug prevention. Human trafficking is far more despicable a crime than drug abuse. The establishment of a nodal agency would give the world a sense that the countries take this issue seriously and that there is a political will to eradicate trafficking.

Legislation to combat trafficking should be considered but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent freedom of movement for adult women. No law or regulation should place women at the mercy of the men in their families or the men in their villages. Their autonomy must be respected.

Governments should refrain from enacting regulations and orders that restrict the free movement of women under the guise of fighting trafficking. Instead, measures aimed at educating women about their rights and raising awareness about conditions in receiving countries should be compulsory. The respective embassies in receiving countries should be proactive in providing assistance to women and girl victims of trafficking.

Protective custody as a means of dealing with victims of trafficking should be reconsidered. Women who are victims of trafficking have not committed any crime. For this reason, they should not be detained except with their consent. Any stay in a government home should be voluntary. In addition, conditions in these homes should be such that the women would want to stay there voluntarily. There should be programmes to keep women occupied;

there should be legal and psychological counselling and help for the women to plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

Governments of the region must work towards facilitating the voluntary return, if that is appropriate, of trafficking victims who are foreign nationals rather than detaining them for long periods in government homes.

All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking in particular. The training should consist of awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at the Office of the High Commissioner for Human Rights and the United Nations Office for Drug Control and Crime Prevention/Centre for International Crime Prevention in Vienna.

Corruption in the police seems to be a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear directive from the top of the police hierarchy that such behaviour will not be tolerated and police officers who engage in such activity should face severe consequences.

There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts and would help to achieve a higher rate of conviction.

There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Sufficient resources should be allocated to deal with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign on AIDS. Gender training for the medical profession should be provided to ensure that women receive non-judgemental, confidential treatment.

Prevention programmes should exist in all three of the countries visited. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour as such surveillance can be subject to a great deal of abuse.

Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

Annex

REPORT OF THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN, ITS CAUSES AND CONSEQUENCES, ON HER MISSION TO BANGLADESH, NEPAL AND INDIA ON THE ISSUE OF TRAFFICKING OF WOMEN AND GIRLS (28 OCTOBER-15 NOVEMBER 2000)

CONTENTS

		Paragraphs	Page
Introduction		1 - 10	6
I.	CONCEPTUAL CLARITY: DEFINITION OF TRAFFICKING	11	7
II.	GENERAL BACKGROUND TO THE PROBLEM OF TRAFFICKING IN SOUTH ASIA	12 - 21	7
III.	GENERAL FINDINGS	22 - 53	10
IV.	BANGLADESH	54 - 78	19
V.	NEPAL	79 - 107	23
VI.	INDIA	108 - 150	29
VII.	RECOMMENDATIONS	151 - 168	37

Appendix: List of selected persons/organizations with whom the Special Rapporteur met during her mission.

Introduction

1. At the invitation of the Governments of Bangladesh, Nepal and India, the Special Rapporteur on violence against women, its causes and consequences visited Dhaka, Kathmandu, Bhairahwa in Rupandehi district, Delhi, Bombay and Calcutta from 28 October to 15 November 2000 to study the issue of trafficking in women and girls in the region.

2. The present report is intended as a case study to complement the Special Rapporteur's previous report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).

3. The Special Rapporteur chose South Asia because of the number of reports of trafficking in the region which she has received over the years, and also because of several existing programmes and initiatives to tackle the problem, both at the national and regional levels, by Governments, non-governmental and United Nations organizations and the South Asia Association for Regional Cooperation (SAARC), which is preparing to adopt a Convention for Preventing and Combating Trafficking in Women and Children for Prostitution.

4. The Special Rapporteur would like to express her sincere appreciation for the cooperation and assistance extended to her by all three Governments, which enabled her to meet with representatives of all relevant sectors of society and to obtain the necessary information and documentation to be able to report to the Commission on Human Rights in an objective and impartial manner. The Special Rapporteur wishes to thank State authorities in all three countries for their availability, particularly during the weekends, and cooperation with the visit. In this context, the Special Rapporteur would like to acknowledge the willingness of all the Governments to undertake efforts to combat trafficking in the region. Although the problem has been recognized, practical action is still in its initial stages.

5. During her visit to Dhaka she met with high-level government representatives at several ministries; the Acting Inspector General of Police; non-governmental organizations; academics; and United Nations and international agencies.

6. During her visit to Kathmandu the Special Rapporteur met with high-level government representatives at several ministries; district officials in Bhairahwa, Rupandehi district, on the border with India; the Parliamentary Human Rights Committee; the Attorney-General; the Acting Inspector General of Police; the Secretary-General of the SAARC secretariat; non-governmental organizations; academics; and United Nations and international agencies.

7. During her visit to India the Special Rapporteur met with high-level government representatives at relevant ministries; the National Commission for Women; the National Human Rights Commission and the Attorney-General. She also met with state authorities in Maharashtra State and West Bengal State; with non-governmental organizations and women's groups, as well as academics.

8. The Special Rapporteur heard testimonies from victims of trafficking in all three countries and sex workers in Bombay. The Special Rapporteur would like to thank the many young girls and women who individually gave their testimonies to her. She recognizes that the

retelling of their stories is a painful experience and that they had to overcome many obstacles to communicate with her. The Special Rapporteur appreciates their courage and their candour and would like to express her gratitude for the trust and confidence they displayed in a mechanism of the United Nations Commission on Human Rights.

9. The Special Rapporteur would also like to express her gratitude for the efficient cooperation and support provided by the United Nations Development Programme Resident Representative in Bangladesh, Mr. Shamim Hamid; in Nepal, Mr. Henning Karcher; and in India, Ms. Brenda Gael McSweeney, as well as their staff, in ensuring a substantively and logistically successful visit.

10. A list of selected persons is annexed to the present report.

I. CONCEPTUAL CLARITY: DEFINITION OF TRAFFICKING

11. Throughout the visit the Special Rapporteur noted the need for conceptual clarity and would like to recall at the outset of this report that she uses the following definition of trafficking:

> Trafficking in persons means:
>
> (1) The recruitment, transportation, purchase, sale, transfer, harbouring or receipt of persons: by threat or use of violence, abduction, force, fraud, deception or coercion (including the abuse of authority), or debt bondage
>
> for the purpose of:
>
> (2) Placing or holding such person, whether for pay or not, in forced labour or slavery-like practices, in a community other than the one in which such persons lived at the time of the original act described in (1).[a]

II. GENERAL BACKGROUND TO THE PROBLEM OF TRAFFICKING IN SOUTH ASIA

12. Chamoli lived near the birthplace of the Buddha in Nepal. When she was 16, she met a young man and fell in love with him. He promised to marry her but insisted that she come away with him to India. So one day she ran away with the boyfriend and crossed the border to India on foot. From there she and her boyfriend took a train to the Indian city of Poona. Once they had reached Poona, Chamoli was taken to a house where there was an older Nepali lady and many young girls. The lady gave her boyfriend some money and then he told her that he was going for a moment. He never came back. Chamoli suddenly realized that she had been sold into prostitution. She refused to accept her new trade. She was repeatedly beaten. She was not given any food. When she screamed in defiance, knives and chilli powder were held to her genital area. Finally exhausted and worn down, she agreed to provide sexual services. After a few weeks, she was sold to a larger brothel in Bombay. There she was given a cubicle that consisted of one small wooden bed surrounded by a curtain. She lived and worked from this space. She served about 10 clients every night of the week, even when she was menstruating.

Often the police raided the place but she was hidden below floorboards. Once she hid behind a curtain and watched as the police began their raid. The Madame of the house took out some money and paid the police and they immediately went away. Finally, the police raided the brothel with some Nepalese NGO activists and Chamoli was rescued. Chamoli was taken to a government home near Bombay. She was kept in a large room with 40 other women. The sanitary conditions and the food were worse than in the brothel. She did absolutely nothing for seven months and was kept in confinement within the home "for her own protection". She was not allowed to leave the home or engage in any trade or vocation. After seven months she was flown to Nepal by an NGO called Maiti Nepal. She was treated well by the NGO who reunited her with her family. By that time she began to have dizzy spells, diarrhoea and constant vomiting. The doctors of the NGO diagnosed her as having AIDS and they began treating her accordingly. When the Special Rapporteur met her she was extremely thin and very ill. She pleaded with the Rapporteur to help other Nepalese girls avoid this fate that had befallen her. She was 18 years old.

13. In an industrial suburb near Bombay, NGO activists took the Special Rapporteur to meet some sex workers during the day when they had to time to speak to her. Many of these women were from traditional devadasi families. Their families had given them to the village temple for sex work but after a while they left the temple and went to work in the city. A group of women met with the Special Rapporteur at her request. She spoke to them of the possibility of setting up a rehabilitation centre near the suburb so that the women could get medical check-ups and learn another trade and find alternative avenues of employment. The women were visibly upset by the Special Rapporteur's suggestion. They informed the Special Rapporteur that they were very happy in their work and that they earned and saved enough money to keep their children and their parents back in the village. They had no intention of changing their trade. They informed the Special Rapporteur that she and other middle class women were safe and comfortable because of the sex workers and their trade. If the Special Rapporteur wanted to assist them, she could help them with programmes to prevent AIDS or programmes to educate their children. However, they felt that they were not in need of rehabilitation.

14. Trafficking of girls and women appears to have become a thriving industry in the countries of South Asia. However, hard data are not available with regard to the actual numbers involved in sex work or being trafficked across borders. NGO activists in Bangladesh estimate that 10,000-15,000 girls and women are trafficked across the border to India per year. Nepalese NGOs estimate that between 5,000 and 10,000 girls a year are trafficked from Nepal to India every year. No survey has been done in any of these countries to ascertain their actual numbers. They are trafficked for a variety of purposes: the primary purpose of trafficking in the region is for forced prostitution, but girls, boys and women are also trafficked for domestic service, organ harvesting, forced begging, forced labour in sweatshops, work as camel jockeys or for forced marriage. Traffickers use deception, fraud, intimidation, drugs and violence to take vulnerable people across borders and are reimbursed for their services. They work alone, in small gangs, or as part of an organized crime syndicate.

15. Trafficking of girls and women often follows the same routes as legitimate migration. As one commentator told the Special Rapporteur, "traffickers fish in the stream of migration". This makes trafficking a difficult crime to detect. Given the large movements of populations across open borders such as exist between India and Nepal, traffickers often merge with the general

population. In addition, traffickers often exploit the desire on the part of girls and women to migrate to escape poverty and discrimination at home. Therefore, without understanding the causes and patterns of migration, any strategy to eradicate trafficking is bound to fail.

16. Forced prostitution remains the primary goal of traffickers in women and girls into India. The actual number of women in sex work in India is difficult to assess. A survey sponsored by the Central Social Welfare Board of India in 1991 in six metropolitan cities indicated that the population of women and children in sex work is between 70,000 and 1 million. Thirty per cent of them are below 18 years old. Nearly 40 per cent began sex work when they were under 18. Seventy per cent of them are illiterate. Strangely, only 43 per cent wanted to be rescued; the majority did not mind remaining as sex workers as they saw few other options.[b]

17. NGO estimates of sex work are, however, much greater. The Indian Association for the Rescue of Fallen Women estimated in 1992 that there are 8 million brothel workers in India and another 7.5 million call girls.[c] The average age of recruitment in the 1990s was between 10 and 14[d] years old. Half of this population may be infected with HIV/Aids[e] (other commentators estimate the rate of HIV infection at 70 per cent).[f]

18. The traffickers are usually young men and middle-aged women who travel back and forth from home countries to receiving countries. They are often referred to in the Nepali trade as "dalals" or "didis". They sell girls to brothels for 15,000-40,000 Indian rupees (US$ 500-1,333). Tragically, many of the traffickers are older women, themselves in forced prostitution trying to escape abuse and bondage. In some parts of Nepal and Bangladesh family members sell young girls to traffickers. In the past, in Nepal, it was the districts around Kathmandu that traditionally gave their daughters for concubinage or sex work. Today, however, the sale of children takes place in all parts of Nepal and Bangladesh. Sometimes a child can be bought for as little as Rs 200 (US$ 4.00).[g]

19. All commentators agree that there has been a recent growth in trafficking. This has paralleled an increase in undocumented migration within the region. Women and girls are trafficked both within South Asia and from South Asia to other regions. They also agree that in the present context of globalization and migration, fewer victims are being kidnapped or abducted. In fact, an overwhelming majority are being trafficked through deception and false promises and are therefore "active participants" in their own trafficking, at least at the beginning of the process which includes recruitment and transportation. This dimension adds to the difficulty of detecting or controlling trafficking.[h]

20. The causes of trafficking are manifold and remain of great concern for the sending countries of the region. In her discussions with the women as well as with activists, the Special Rapporteur noted that poverty was a major factor and that many of these women were either sold into prostitution or left their homes to escape poverty. However, it was also pointed out that the poorest areas of Nepal were not the areas from which women are being trafficked. Other factors contributing to trafficking were traditional practices in certain villages and among certain castes whereby young girls were sold into concubinage for feudal lords or into prostitution. Social discrimination against women was also responsible for women leaving home. Lack of access to inheritance, land and employment and the practice of polygamy made women easy prey for traffickers who exploit their desire to migrate. Child marriage and unilateral divorce also make

women extremely vulnerable to the whims of male partners. This discrimination was often given as the reason why women did not wish to return to their homes once they had been rescued. They were afraid of the stigma, but they also did not want to return to the same lives that they had sought to escape. In addition, all commentators point to the fact that members of lower castes and ethnic minorities appear to be disproportionately represented in the sex worker population.

21. The conditions of prostitution in some of the brothels in Bombay and Calcutta appeared to resemble slavery-like practices. Most of the young girls the Special Rapporteur spoke to were being held against their will, were tortured, degraded, beaten severely, and were repeatedly assaulted on the lower half of their bodies. They were deprived of food and water until they submitted. Once they agreed to provide sexual services the stories diverge. Some women from more well-to-do brothels spoke about a collegial atmosphere, good food and good clothes and enough earnings to feed their loved ones. The majority, however, told of servicing more than 10 clients a night, of unsanitary and slavery-like conditions, of being afraid to move around freely because of the fear of violence from the Madame and young male bouncers who kept them in check. The Special Rapporteur herself witnessed the truth of this when she made an unannounced visit to the red light district in Bombay. One of the girls from the brothels ran towards the Special Rapporteur's entourage. Immediately, very tough looking young men surrounded the entourage in an extremely threatening manner. The girl extricated herself from the group and went back into the brothel.

III. GENERAL FINDINGS

22. Throughout her mission to Bangladesh, Nepal and India, the Special Rapporteur was satisfied to note that the Governments appeared to be seriously committed to the eradication of the trafficking of women and children across national borders. However, despite a formal commitment, effective institutions, laws and policies aimed at eradicating trafficking were still not in place. In addition, effective implementation of existing provisions and policies that are directed at combating trafficking was also lacking. The Special Rapporteur found that many of the campaigns and programmes were donor driven or under NGO leadership. The Governments of the region had not been aggressive or proactive in their commitment to eradicate trafficking in the past. However, owing to a greater awareness of the problem, government programmes to combat trafficking have gathered a certain momentum in the last few years.

23. The lack of effective implementation of laws and policies aimed at ending trafficking is reflected in the low conviction rates for perpetrators of crimes of violence against women. In Bangladesh, according to figures provided by the police, of about 7,000 cases of violence against women registered during the past year there were only 21 convictions, while 2,000 cases were being processed. The perpetrators on the rest - the vast majority - of the cases were set free. The same was true of Nepal: the police figures show that of about 150 cases of trafficking offences during the past year, 55 per cent resulted in acquittals.

24. The most urgent need in terms of the trafficking of women and girls from Nepal and Bangladesh to India is the collection of data so as to ascertain the true scope of the problem. Estimates of the number of women trafficked vary from 10,000 a year to 25,000. The estimated number of sex workers varies from 1 million to 8 million. The Government of India informed

the Special Rapporteur that it will conduct a comprehensive national survey on trafficking and prostitution in the coming year. The Special Rapporteur welcomes such an effort and calls on the Governments of Nepal and Bangladesh to do the same. Unless we know the numbers, trafficking patterns and trafficking routes, it will be impossible to deal with the problem of trafficking in the South Asian region.

25. In discussing trafficking in the South Asian region, it is important to retain a measure of conceptual clarity so that there can be a targeted response to the problem. The Special Rapporteur is particularly concerned with the lack of conceptual clarity reflected in the draft SAARC convention, especially in light of the international negotiations on the definition of trafficking. In this context, it is important to recognize the conceptual difference between trafficking and prostitution. Trafficking of people across boundaries is for a variety of purposes and not only for prostitution. The Special Rapporteur is aware of women, boys and girls being trafficked for forced labour, forced marriage and to work as camel jockeys to various parts of South Asia as well as to other regions. In addition, it is important to maintain conceptual clarity in separating the regimes that operate for women and those that operate for children. Women are adults and should be treated as such in laws, policies and programmes. Children may need additional special measures to prevent them from being victims of trafficking. Finally, trafficking must be conceptually separated from migration. For many countries trafficking is considered an immigration problem and the campaign against trafficking is linked to the desire to close borders to people from other countries. Trafficking should be dealt with not as an immigration problem requiring exclusionary laws and practices, but as a human rights issue. The struggle to prevent trafficking should not be made an excuse for racist or exclusionary immigration practices anywhere in the world.

26. Conceptual clarity with regard to trafficking is the only way we can prevent the enactment of laws and programmes to prevent trafficking that violate other human rights of women. While the Special Rapporteur welcomed the enthusiasm to fight trafficking she found in South Asia, she was disturbed by the fact that many of the laws and policies appeared draconian and seemed to violate other human rights of women. For example, Nepal and Bangladesh have reacted to the abuse of women domestic servants working in the Middle East by banning women and girls from going to the Middle East for domestic service. In Nepal, measures are being taken to require all unmarried girls to receive the permission of their father or brother to get a passport, or that the village councils sanction the decision of women to leave their communities. These measures violate women's freedom of movement and make them completely dependent on the men in their family and in the village. Many of the victims interviewed by the Special Rapporteur were very clear - they had left home because of poverty and discrimination. To force these women to remain against their will in communities where they are unhappy is a violation of their basic rights. For example, some of the women told the Special Rapporteur that they had left their communities because their husbands took other wives. To force these women to remain in their communities cannot be the answer to the problem of trafficking. What is needed is a targeted effort to capture the trafficker and prevent trafficking so that the vulnerability of the women is not exploited. What are not needed are draconian attempts to block the natural migration routes and social mobility.

27. The discrimination against women that is prevalent in South Asia runs parallel to an ideology that asserts that women are vulnerable, like children, and need protection. The Special

Rapporteur was told that some of the more drastic measures taken to curtail women's freedom of movement are in their interest and for their "protection". The notion of protection is perhaps most problematic when it comes to the practice of "protective custody". In India, when women victims of trafficking are rescued they are often sent to a government home for protective custody until their cases are heard or until they are sent back home. In many cases they languish for many years in these homes, forgotten by everyone. Protective custody is only marginally better than being in prison. Women are confined to the vicinity of the homes. The conditions in the home the Special Rapporteur visited were substandard, and the women there seemed deeply unhappy. Protective custody as practised in South Asia is a serious violation of women's rights and it is important that Governments of the region re-examine this concept, as well as the conditions in the government homes where women are kept.

28. The Special Rapporteur's visit to Bangladesh, Nepal and India took place at a time when the SAARC countries were debating how to tackle the trafficking issue. One of the aims of the Special Rapporteur's visit was to suggest new strategies for anti-trafficking work in the region, to recommend possible partnerships among players and the mechanisms for coordination of regional activities and, furthermore, to encourage States to develop an effective regional convention on trafficking, in line with current international legal developments and in particular the protocol to the United Nations Convention against Transnational Organized Crime which was agreed this year and opened for signature in December 2000.

29. Regional cooperation among SAARC countries is absolutely essential if trafficking in women and girls is to be eradicated in the South Asian region. The countries of the region have accepted this and the Special Rapporteur recognizes and welcomes the fact that the first regional treaty to be concluded under the auspices of SAARC is a regional convention on trafficking. Prior to the tenth SAARC summit, held in July 1998, the Foreign Ministers of the SAARC countries had adopted a draft SAARC convention for preventing and combating trafficking in women and children for prostitution. For political reasons a subsequent summit could not be held and the convention has therefore not been formally adopted. The Special Rapporteur was pleased to note that all the Ministers for Foreign Affairs of the region were absolutely committed to ensuring that the SAARC convention is adopted as soon as possible. The Secretary-General of SAARC has also played a pioneering role in this regard.

30. Though the Special Rapporteur, along with many others, welcomes the SAARC convention as a sign of regional commitment to the eradication of trafficking, she has some reservations with regard to the content of the convention. She has communicated with all the Ministers for Foreign Affairs and the Secretary-General of SAARC on this subject. In August 1999 the Special Rapporteur wrote to all the Heads of State of the SAARC countries to congratulate them for having taken the initiative to develop a regional instrument to address the urgent problem of trafficking in women and children. She drew their attention to efforts to develop new international law on trafficking in persons. The Special Rapporteur has reviewed the SAAR convention closely and proposed a number of observations and recommendations which she sent to all SAARC Heads of State.

31. The Special Rapporteur is especially concerned that the convention lacks conceptual clarity on important issues and is not in conformity with the new international legal standard on trafficking in persons as set out in the protocol to the new United Nations Convention on

Transnational Organized Crime. She encouraged SAARC Heads of State to ensure that the provisions of the SAARC convention do not conflict with existing international human rights law and the provisions of the protocol in particular so that there is one standard for international action. The SAARC convention does not distinguish between women and children. The legal regime surrounding women should be based on a framework of rights and the concept of coercion when it comes to trafficking. The legal regime with regard to children must be completely different. The draft convention also does not explicitly recognize that trafficking could be for other purposes than for prostitution. By concentrating on the end result and not on the process of trafficking and abuse, for whatever purpose, the convention does not recognize trafficking as a distinct and unique crime regardless of a nexus with prostitution. In not recognizing this distinction it is not in keeping with current international standards as set out in recent international conventions and instruments. In addition, the convention does not distinguish between movements and migrations that are legitimate and consensual and those that are coerced. This will result in a great deal of abuse and the violation of women's freedom of movement in a context of constant movement of people across national and local borders. In addition, the convention brings into play the concept of "protective custody" after rescue and rehabilitation without stipulating that any stay in a government home should be voluntary. The need to ensure women's economic and social rights within this context is also not examined.

32. During her visit to Nepal, the Secretary-General of SAARC told the Special Rapporteur that the convention had in theory been agreed upon by all States parties and that there would be a meeting early in 2001 to sign it. He conveyed the importance of regional cooperation on the trafficking issue and concern that if the current text were to be reopened for discussion, given the current political tensions an agreement would probably not be reached. He stated for the record that there would be an amendment conference in one year's time when the definition and other parts of the convention could be brought into line with recent international legal developments.

33. In discussions on the SAARC convention with all three Governments all indicated that they were not opposed to looking at the provisions of the new protocol to see what could be included in the SAARC convention. They agreed that they should not have a convention which is weaker than the new international standard, but nonetheless did raise concerns that if the convention were reopened it might not be possible to get a new consensus, as the initial text had been a compromise.

34. The Special Rapporteur hopes that her concerns, and the concerns of many others who have been involved in these issues, including the United Nations High Commissioner for Human Rights, will be taken into consideration by the States parties to the SAARC convention. The Special Rapporteur welcomes this initiative and the candour with which the issue of eradicating trafficking has been broached by the member Governments.

35. A regional convention in and of itself cannot solve the problem of trafficking in South Asia. It must be supplemented with a regional monitoring mechanism as well as regional cooperation among law enforcement officials. Among the mechanisms of cooperation that should be considered is a regional task force involving high-level officials from all the SAARC countries. In addition, there should be national and state-level nodal agencies that closely network with one another, and focal points in ministries of women, children, home, law and health that also network with one another. In addition to coordination among the executive

branches in the different Governments, many felt that the human rights commissions in these countries should also appoint special rapporteurs who would look into the specific problem of trafficking.

36. At the national level, it must be realized that ad hoc, piecemeal efforts will not result in effective action against trafficking. In this regard, the Nepalese Plan of Action with regard to trafficking is a useful model for other countries in the region. The Plan of Action envisions action being taken in the field of legal reform, awareness raising, rescue and rehabilitation as well as health. This coordinated effort is, at least in theory, a very laudable step; however, the Special Rapporteur feels that it is important to go beyond the words on paper. Implementing the Plan will require concerted, proactive programmes and mechanisms on the part of Governments. Unless such action is taken the Plan will not have any real effect on efforts to eradicate trafficking.

37. The struggle to eradicate trafficking in the South Asian region has two components. The first concern the efforts of the criminal justice system to prevent, prosecute and punish traffickers; the second involves social welfare for the women who want to be rescued and provided with alternative avenues of making a living. The social welfare component also includes health policies and activities around the problem of HIV/AIDS among women who have been trafficked for prostitution.

38. In recent times, because of increased awareness, most of the countries of the region are contemplating legislation to combat trafficking. It is extremely laudable that political will is now being translated into legislation. However, the Special Rapporteur, as a mechanism of the Commission on Human Rights, is deeply concerned that the legislation is unduly harsh and violates basic principles of human rights law.

39. An example of draconian legislation that presents serious human rights problems is the current draft Traffic in Human Beings (Offences and Penalties) Act 1999 prepared by the Nepalese Ministry of Women and Social Welfare. The bill appears to have been drafted from a law and order perspective without consideration for the human rights either of the perpetrator or of the victim. First of all, the draft criminalizes prostitution for the first time in Nepal. International standards as set by the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others as well as more modern legislation have all advocated that prostitution not be criminalized and that only the exploitation the prostitution should be criminalized. This is because experience has shown that criminalization of prostitution results in the double victimization of the woman concerned as she, and not the traffickers, becomes the main target of police action. This provision is a major step backwards for Nepal and will create great hardship for the women concerned.

40. In addition, the new legislation gives special powers to the police to arrest, detain, search and seize. Many of these provisions are direct violations of the International Covenant on Civil and Political Rights. The power to arrest and search without warrants, preventive detention and, most troubling, the shifting of the burden of proof so that the accused has to prove that he is innocent are all violations of international standards of human rights. This law will result in a great deal of harassment of innocent people as well as of the victims. Police forces anywhere in the world can act with a certain measure of impunity. The purpose of human rights standards is

to ensure that this impunity does not result in the harassment of innocent individuals. A law that allows so much scope for abuse is extremely problematic for those who wish to fight violence against women as a human rights issue. It is also a dangerous precedent for any criminal justice system.

41. Other countries of the region are also contemplating new anti-trafficking legislation. The Special Rapporteur sincerely hopes that any new legislation will be enacted from a human rights perspective and not purely as a law and order issue. In this context, experience from around the world may prove to be informative. Such experience seems to suggest that anti-trafficking legislation should be targeted; it should focus on trafficking and the punishment of traffickers, and not on the victims. It should concentrate on the problem of trafficking of minors and it should contain a comprehensive social welfare component based on respect for the economic and social rights of the trafficked woman. Such assistance should be voluntary, it should involve a significant health component and involve the empowerment of the women through skills training.

42. The police forces of the respective countries of the SAARC region are the most important institutions in the struggle to eradicate trafficking. At the moment there are ad hoc, informal attempts at cooperation among them. A more formal long-term arrangement for sharing information and joint operations against trafficking may prove to be essential in the present context. A joint task force of all the police departments of the SAARC countries may be a step in this direction.

43. Empowering the police to deal with trafficking may not be very successful unless there are appropriate guidelines and training procedures in place. The police response to the question of trafficking varied in the Special Rapporteur's interviews. Some police officers were very enthusiastic; others were pioneers in the field. However, some were indifferent and uninterested in new procedures or processes. The Special Rapporteur was concerned that even the enthusiastic police officers would in their zeal to fight trafficking infringe on the rights of women victims. For this reason, it was suggested that a handbook be prepared for the police forces of the region, in regional languages, to raise their awareness about the problem and to give them detailed instructions on how to handle cases involving traffickers. It would include procedures on how to deal with traffickers, brothel owners, pimps and, of course, the victims themselves. If such a handbook were prepared in consultation with the women's groups of the region, it might be a major step forward in making the police forces of the region more responsive to the problems of trafficking.

44. Police corruption in the trafficking process was an issue that was constantly raised by women's groups and women victims of trafficking. One of the victims described how, having escaped from a brothel in Calcutta, she went to complain to the police. The police called the brothel owner, who paid the police a substantial sum in front of the girl. She was taken back to the brothel and beaten till she was nearly senseless. She still suffers from injuries resulting from that episode. Other victims said that many policemen were clients of the brothels and on good terms with the traffickers, owners and pimps. Victims and women's groups in all three countries recounted many cases of police corruption and many felt it was endemic, something that was taken for granted. Unless direction comes from the top that such behaviour will not be tolerated,

and unless there are punitive sanctions against policemen who indulge in such behaviour, it is unlikely that the police will play the proactive role that is expected of them.

45. Even if the police in the region act with fortitude, if the judiciary is insensitive to the problems of women, effective action against trafficking cannot be taken. The 21 convictions for violence against women in Bangladesh and the 55 per cent acquittal rate in Nepal with regard to trafficking cases raise serious questions about how the rule of law operates in South Asia with regard to trafficking. The police and some women's groups blame the judiciary for this state of affairs, saying that judges are very lenient because they are insensitive to gender issues. The judiciary and other women's groups put the blame on the police, saying that the investigation of crime is so weak and the evidence produced so minimal that judges have no other option but to acquit the suspects. Training in investigation of trafficking crimes for all the police forces of the region is essential and may be possible with international technical assistance. In addition, it is extremely important that the judiciaries in the region be involved in workshops and programmes that raise their awareness about the problem of gender and violence against women in their societies. A gender-sensitive judiciary is absolutely essential if victims of sexual violence are to receive justice in South Asia.

46. In her discussions with women victims and NGOs as well as officials, the Special Rapporteur received a mixed picture about the judiciary's role in fighting trafficking, especially in India as a receiving country. The apex court of India, the Supreme Court, has been a pioneer both nationally and internationally in vindicating the rights of women. Its judgements in cases of sexual harassment and trafficking have been far-reaching, requiring maximum accountability on the part of State and non-State actors who violate the human rights of women. However, at the magistrate level the situation is far more mixed. Some judges are extremely sensitive and try to make the best possible judgement for the victims. Some are less caring and have sent women and girls to jail or for prolonged periods of protective custody. As a general rule, the Indian courts send rescued girls back to Nepal or Bangladesh, through NGOs like Maiti Nepal and the Bangladesh National Women Lawyers Association (BNWLA), or they send them to government homes. Beyond that there is very little activism or inquiry. Very little action is taken by the police or the judiciary against the traffickers and those who are initially responsible for the violation of the rights of these women.

47. With regard to the evidentiary procedures involved in trafficking cases, the women and girls who are victims of the trafficking are the primary witnesses against the perpetrators. In cases involving organized crime, they are extremely vulnerable and in fear for their lives. In addition, in Nepal, once they leave the police station after filing their complaint, they are often untraceable. As a result, the new trafficking bill allows as evidence their statement before the judge during the initial trial stages; the victims do not have to be present in court. In some countries in Europe, the witnesses must be present in court but they are kept incognito with written questions sent to them to answer. The defendant, however, does not see the witnesses. In other countries fighting organized crime, there are elaborate witness protection schemes paid by the State and the witnesses often change their identity and move to a different location. In adopting such procedures, the need to get hard evidence in trafficking cases must be balanced by procedures that ensure the defendant a fair trial. In this sense, the witness protection programme, even if it is the most expensive, is also the most fair. The countries of the region should inquire into this possibility and, with the help of women's groups and NGOs, counsel and provide

protection for women and girl victims so that they can appear in the witness box without fear. The Special Rapporteur wishes to emphasize that the provision of witness protection should be voluntary and at the request of the individual concerned.

48. The problem of trafficking has a social welfare component that is integral to the understanding of the phenomenon. The socio-economic factors contributing to trafficking require that the problem be understood within the context of the socio-economic rights of women. If one adopts this perspective different issues emerge that require the attention of the State.

49. The Special Rapporteur found that women and girls leave Nepal and Bangladesh in such large numbers because of a lack of economic opportunities at home and because they suffer from a great deal of social discrimination. Many of these women belong to lower caste groups or ethnic minorities. In addition, the inheritance laws, land laws and employment regimes in these countries appear to discriminate against women. Many women and girls leave home because husbands have taken second and third wives. Girls often run away from home because of stepmothers or because they feel they are not wanted or because there is abuse. The need to alleviate poverty is recognized as an important way to fight all forms of human exploitation, including trafficking. However, in addition, States must feel compelled to take measures that give dignity and equality to women and girls. Inheritance laws, personal laws and socially discriminatory attitudes should be reformed in order to give women an equal chance in their society and prevent them from becoming easy prey to traffickers. Their desperation to leave their home countries, recounted in one testimony after another, often makes women complicit in their own trafficking, at least in the initial stages. The Special Rapporteur recorded only a very few cases that involved abduction. Most of the cases involved young girls and women who wanted to leave in search of a better life than the one they had at home. Providing women with income-earning opportunities and avenues for economic independence is one strategy that should be adopted to prevent trafficking. The removal of discriminatory legislation and discriminatory practices is also essential if the root causes of trafficking are to be tackled. Unless the sending countries understand that most of the women leave because of unhappy conditions in the home, they will not take the measures that are necessary to prevent trafficking while respecting the human rights of the individual women.

50. The social welfare component is also an important factor in the main receiving country in the region, India. While the young girls and women remain sex workers they are in danger of contracting HIV/AIDS and other sexually transmitted disease. Though many recent initiatives have begun with regard to AIDS in Indian cities, a greater effort is needed to seriously combat the problem. According to unofficial estimates, between 60 per cent and 70 per cent of sex workers contract HIV/AIDS. In all the countries there were very few medical facilities available for AIDS patients. AIDS education among the sex workers is also minimal owing to the ambiguous legal position of these women. Unless more attention is focused on the health of the sex worker, her basic rights to life and to health will be greatly undermined.

51. Even if the sex worker is rescued, she is faced with innumerable problems. She is often kept in a government home while she waits to be released. Though she has done nothing wrong and is seen by the law as a victim, her stay in the home is by court order and is not voluntary. This "protective custody" is a serious infringement of the human rights of the women concerned.

In one case, a woman, her sister and daughter who had been trafficked to Calcutta from Bangladesh remained in a government home for four years, despite interventions by the Bangladeshi Consulate and NGOs. Meanwhile, the trafficker who was accused in the case was out on bail with full freedom of movement. For this reason many women and girls do not want to be rescued. On 16 February 2000 a Bombay High Court judge, acting on information received, ordered a round-up of young girls working in prostitution; 469 girls were rounded up. Most of them did not want to go home, nor did they want to stay in government homes. This created serious difficulties for the officials concerned. Unless the social welfare facilities exist for rescue, young girls and women will be reluctant to leave oppressive conditions at a brothel for what they see as a very uncertain future.

52. The Special Rapporteur visited a government home in Liluah in Calcutta where many of the women who had been rescued were kept. The conditions in the home resembled a prison. Surrounded by factories and an outdated drainage system, the health conditions at the home were very unsatisfactory. The living conditions were not only sparse but extremely gloomy. The trafficked women were kept with mentally ill patients, deaf and dumb women and destitute women. Records with regard to the women in the home were not properly kept and information on the women was scanty and not properly taken. All the women the Special Rapporteur spoke to were deeply unhappy and wanted to be released. There were very few activities and many victims we interviewed said they did nothing for the whole day. They had done nothing wrong and therefore their "protective custody" seemed particularly cruel. Fortunately, the National Commission of Women in India has recognized this problem and brought a public interest case against the Liluah Home. As a result of this action, there is a court order designating an NGO to intervene, investigate the home, straighten out the records, help release any of the women who wish to go and make recommendations with regard to the management of the home.

53. Women who are rescued should be sent to homes only on a voluntary basis since they are not guilty of any crime. In addition, the government home should be a refuge for the women, not a substitute for jail. The government home should offer programmes to develop the skills and talents of women so that they can become empowered, both economically and psychologically. In contrast to the government home at Liluah, the Special Rapporteur visited many NGO facilities for girls and women. St Catherine's Home in Bombay and Maiti Nepal in Kathmandu are examples of successful facilities. The women seemed well fed, talkative, lively and full of activity. Their talents were being brought out and they were being given counselling so that they could adapt to a new life away from the brothel. Critics argue that these homes are extremely moralistic and authoritarian towards the girls who have been rescued. The Special Rapporteur did not find any evidence of that and the women seemed happy and engaged. Many of them had voluntarily filed cases against their traffickers. Girls rescued by Maiti Nepal assist Maiti Nepal with its work at the borders and in their programmes. All NGOs are not as committed or as effective as these NGOs with regard to taking care of rescued women. However, a government home with NGO management subject to supervision by government health and social welfare bodies would be an effective way of moving forward in a context where resources for such homes are limited.

IV. BANGLADESH

54. Bangladesh is one of the poorest countries in the world; a large percentage of the vast population is young and lives below the poverty line. The slow economic growth of the country coupled with periodic natural disasters have put serious constraints on the ability of the Government to provide adequate resources for women's programmes and projects. The United Nations Family Planning Association State of the World Population 2000 report declared Bangladesh second highest in the world in incidence of violence against women. Violence takes many forms and includes wife murder for non-payment of dowry, custodial rape, attacking with acid and trafficking.

55. For the most part, women remain in a subordinate position in society. They are often ignorant of their rights because of continued high illiteracy rates and unequal educational opportunities, strong social stigmas and lack of economic means to obtain legal assistance. NGOs operate programmes to raise women's awareness of their rights and to encourage and assist them in exercising those rights. Yet, prevailing stereotyped attitudes and practices justified on social grounds create an environment for the acceptance of violence against women, especially in the area of trafficking.

56. There is extensive trafficking from Bangladesh, primarily to India, Pakistan and destinations within the country, largely for purposes of forced prostitution, although in some cases for labour servitude. Some children have reportedly been trafficked to the Middle East to work as camel jockeys. The exact number of women and children trafficked is unknown. NGOs estimate that several thousand women and children are victims of trafficking each year. Most trafficked persons, eager to escape the cycle of poverty, are lured by promises of a good job or marriage. Orphans, runaways and others outside the normal family support system are also susceptible. The border between Bangladesh and India is porous, especially around Jessore and Benapole, making illegal border crossings easy.

Legal framework

57. Bangladesh is a party to the Convention on the Elimination of All Forms of Discrimination against Women and has recently signed the Optional Protocol. In the concluding comments of the Committee on the Elimination of Discrimination against Women (CEDAW) adopted, following the consideration of the third and fourth periodic reports submitted by Bangladesh (A/52/38/Rev.1, paras. 409-464) the Committee, inter alia, expressed its concern about the Government's reservation to article 2 and article 16, paragraph 1 (a) of the Convention. Article 2 is regarded as a core provision as it concerns implementation of the Convention, while article 16 is critical for the full enjoyment by women of their rights.

58. The Special Rapporteur met with representatives of the Ministry of Women and Children's Affairs (MOWCA), who described the multisectoral action programme being undertaken to address violence against women, including trafficking in women and girls. The Law Commission was established by the Government to review existing laws and enact new ones to safeguard women's rights and to prevent violence against women. The Special Rapporteur was informed that the Law Commission had been mandated to look into the implementation of international obligations and may consider lifting the reservation to article 2.

59. The Government of Bangladesh in seeking to address the problem of violence against women generally, and trafficking in particular, has promulgated laws that have had negative repercussions for the victim. The Suppression of Immoral Trafficking Act of 1993 provides for stringent penalties for women and children forced into prostitution. The Women and Children Oppression Act of 1995 (Special Provision), a revision of the 1983 Cruelty to Women Ordinance, presents many of the problems discussed in the previous section. It treats women and children together and introduces the death penalty for those who involve children in trafficking. New legislation grants even more draconian powers to the police and provides for special tribunals and evidentiary procedures, and stiffer penalties.

60. The Suppression of Violence against Women and Children Act came into force in February 2000. It is intended to address the need for more effective prosecution of perpetrators of violence against women and children than existed previously and provides redress for victims of various manifestations of violence including trafficking and acid throwing. The Act makes provision for compensation for the victim from the guilty person/persons. It also contains provisions for remedial measures for negligence or wilful faults committed by an investigating officer and for a child born as a result of rape to be maintained by the father.

61. The Government reports that since the introduction of the new law the delay in investigating and trying cases relating to violence against women have greatly decreased. Punishments for trafficking and other offences have been made stiffer. Ten special tribunals have been set up to expedite the processing of cases. The tribunals can arrange for safe custody during the trial period. Previously, prisons were often used to provide safe custody for women victims of violence. One study conducted by the Bangladesh National Women Lawyers Association found that nearly half of the women in Dhaka's central jail were crime victims being held in safe custody, rather than criminals. While women may initially consent to this arrangement, it is difficult for them later to obtain their release, or to gain access to their family and lawyers. However, under the new Act, women will reportedly be given the choice of going to a government rehabilitation home or staying with relatives or other private persons.

62. While recognizing efforts to improve the situation, including the enactment of laws specifically prohibiting certain forms of discrimination against women, and although pleased that the Government is taking firm action to protect women from violence, the Special Rapporteur is concerned about the introduction of the new draconian laws and the application of the death penalty for a whole range of crimes against women including trafficking, rape, acid throwing/burning and dowry violence under the new Act. The Special Rapporteur is a mechanism of the Commission on Human Rights and she emphasizes that the campaign against trafficking must be undertaken from a human rights perspective. The Special Rapporteur is also worried about the accused's right to due process and a fair trial.

63. Though the law provides severe penalties for trafficking few perpetrators are punished. NGOs report that police and local government officials often either ignore trafficking in women, are easily bribed to look the other way, or may even be involved. Exact numbers of charges against traffickers are difficult to obtain and traffickers are usually charged for lesser crimes, such as crossing the border without the correct documentation.

64. Government statistics provided by the Ministry of Home Affairs indicate that out of 7,000 cases registered under sections 5 and 6 of the Oppression Act of 1995, which carry a maximum sentence of death or life imprisonment, only 21 convictions were obtained. Two thousand cases are said still to be in the trial process. Clearly, more stringent and punitive laws are not the answer. Tougher laws may in fact act as a deterrent to registering cases against traffickers and may lead judges to acquit defendants rather than impose what they feel to be an unfair punishment, especially the death penalty. Studies have shown that the majority of judges say that a lesser sentence would help the courts to convict, especially since trafficking is a very difficult crime to prove and the evidence presented by the police does not always justify stringent punishment.

Programmes and policies to combat trafficking

65. The Ministry of Women and Children's Affairs is the lead ministry for promoting the equality and development of women. The Ministry has made the campaign against trafficking an important priority and the National Policy for the Advancement of Women, drafted by the Ministry, includes a section on violence against women, including measures to combat trafficking. Furthermore, a comprehensive three-year project to combat trafficking is to be implemented by the Ministry, in association with UNICEF and funded by the Norwegian aid agency NORAD.

66. MOWCA also has a violence against women unit, which monitors incidents of violence and submits reports to the National Committee on Violence against Women.

The criminal justice system

67. The Special Rapporteur met with representatives from the Bangladeshi police. Although there was awareness of the problem of violence against women, they admitted that there was no police training in handling cases of violence against women in general or trafficking in particular. The police have received some training on reproductive health. The Special Rapporteur recommended gender sensitization and human rights training programmes for the judiciary, the police and health professionals, particularly those relating to violence against women which could be provided by the technical cooperation programme of OHCHR. She encouraged the Government of Bangladesh to request such assistance. OHCHR has informed the Special Rapporteur that since her visit Bangladesh has requested technical assistance and a programme is being developed with the Government.

68. In response to the many cases of trafficking, the Government has recently set up women's police units to look into cases of violence against women. If women want protective custody they can be kept in these units. The unit also follows the individual case, provides legal support to the victim/survivor and shelter for six months to a year. DFID has also funded a project to improve access to justice by women and the poor.

69. A special squad of the Criminal Investigation Department (CID) of the police force has been specially tasked with speedy investigation of cases of violence against women and also deals with the problem of trafficking. However, the statistics reveal that despite this squad, the actual number of cases filed in court is extremely small and the evidence produced before judges

inadequate. Again, the Special Rapporteur suggested that technical assistance be requested from multilateral agencies specializing in human rights protection and combating violence against women.

Rescue and social welfare

70. The Government of Bangladesh has no special programmes relating to the social welfare of trafficked women. The Ministry for Foreign Affairs informed the Special Rapporteur that the Home Minister of Bangladesh had asked the Government of India for a list of all Bangladeshi women being held in Indian shelters and jails, following reports that women are detained and not allowed to return home whilst a case is pending before the courts. However, the Special Rapporteur visiting women in homes and jails in India was informed that the Bangladeshi diplomatic representation in India was not very responsive, often taking years to respond to inquiries and information.

71. Several women's organizations have provided different forms of assistance, including shelters for the protection of victims of violence. These include the Bangladesh Women Lawyers Association and Bangladesh Mahila Porshod.

International agencies

72. At the time of the Special Rapporteur's visit to Bangladesh USAID was planning to start a 13-month anthropological study into the problem of trafficking. This would involve looking at the underlying factors of trafficking, collection of statistical data, setting up of a database, and compiling information about the victim, and a profile of the trafficker. The study will attempt to collect comprehensive data on the problem. Since there are no available data on trafficking in terms of a comprehensive national study, the Special Rapporteur welcomes this initiative.

73. The United Nations agencies are all involved in programmes that include some aspect of the campaign against trafficking. UNICEF and The International Labour Organization have taken the lead in working with government agencies to combat trafficking. However, unlike the agencies in Nepal, the United Nations in Bangladesh does not have a co-ordinated joint effort involving all the multilateral agencies. Such a joint task force may be useful in the long run in Bangladesh.

Non-governmental organizations

74. Most, if not all, the rescue and social welfare work in Bangladesh is carried out by non-governmental organizations, although the Government does support some local NGO initiatives to combat trafficking.

75. The BNWLA was one of the NGOs the Special Rapporteur met with during her visit to Dhaka. It has been very active in addressing the problem of trafficking. BNWLA conducts awareness-raising programmes, aimed at alerting persons to the dangers of trafficking through leaflets, stickers and posters; provides legal assistance to trafficking victims and initiates legal

action against traffickers; works with its counterparts in India to help trafficked girls and women return to Bangladesh. BNWLA also runs a shelter for trafficked women and children that provides health care, counselling and training.

76. The Center for Women and Children (CWCS) has networks to monitor trafficking across the country; it conducts awareness meetings and has a pilot project to make police aware of the rights of women and children. Other organizations working in the field are the Bangladesh Mahila Parisad (BMP) and Ain O Salish, which specialize in advocacy and lobbying for reform.

77. Dhaka Ahsania Mission has undertaken a child and trafficking prevention programme that comprises four components: community awareness, reintegration, rehabilitation and networking. ATSEC is a national anti-trafficking network formed to link NGOs and government initiatives, as well as to conduct awareness-raising programmes.

78. The Special Rapporteur also met the organizations Aparageya Hostel, the Bangladesh Manabadhikar Sangbadik Forum, Naripokkho, Ain-O-Unnyan Sangstha, Banchete Shekha, Rajshahi, UBINIG, Bangladesh Retired Police Officers' Welfare Association, CWFD, ADAB, and Women for Women, all of which are involved in programmes involving trafficking.

V. NEPAL

79. Trafficking in women and girls remains a serious problem. Nepal is a primary sending country for the South Asia region, with the main destination being India. International agencies estimate that 100,000 to 200,000 women from Nepal are currently engaged in exploitative situations of prostitution in the cities of northern and central India and, increasingly, further afield in South Asia and the Middle East. It is also estimated that an additional 5,000-10,000 women and girl children enter these trafficking networks annually.

80. Landlessness amongst women, unemployment and under employment, intense income poverty, widespread gender discrimination (both de jure and de facto), religious and cultural sanctions for prostitution amongst certain groups and the growing acceptance of the inevitability of migration have all been identified as contributing factors to the increase of trafficking of women and children from Nepal. Discrimination with regard to inheritance laws and citizenship laws is another factor that makes women victims of trafficking. The Special Rapporteur stressed the need to remove these discriminatory laws and to bring Nepalese law into conformity with international norms and standards.

81. The Government of Nepal has identified trafficking as one of its major priorities. To this effect, supported by donors, the Government adopted in 1999 the National Plan of Action against Trafficking in Children and their Commercial Sexual Exploitation. The ILO played a major role in pushing forward this programme.

Legal framework

82. Nepal is a signatory to the Convention on the Elimination of All Forms of Discrimination against Women. The 1990 Constitution of Nepal prohibits trafficking in human beings, slavery, serfdom and forced labour as do a number of international human rights treaties to which Nepal is party.

83. In Nepal, besides the Constitution, there have been many legal initiatives with regard to trafficking. The Traffic in Humans (Control) Act 1986 is the legislation that currently governs trafficking in Nepal. The most important recent initiative is the Anti-Trafficking Act that is in final draft form and currently before Cabinet. The Government of Nepal hopes to enact it during the course of the year. Though the Act recognizes trafficking as a problem and is full of good intentions, it is deeply problematic from a human rights perspective. The Special Rapporteur has outlined her concerns in the earlier section on general findings. These concerns include the criminalization of prostitution, extraterritorial jurisdiction, shifting of the burden of proof and draconian police search and seizure powers.

84. There is also an initiative to set up special tribunals to try the offence of trafficking with lesser evidentiary standards. Again, the Special Rapporteur reminds the Government of Nepal that it is obligated under international human rights standards to give the defendant a fair trial with the necessary safeguards so that the innocent are not victimized. The Government is also in the process of enacting laws in the field of domestic violence, a law on the rights of children and on a family court. All these will have some bearing on the trafficking issue.

Programmes and policies to combat trafficking

85. The Ministry of Women, Children and Social Welfare (MWCSW) has taken the lead in a number of initiatives, programmes and policies to combat trafficking. Donor agencies are also eager to deal with this problem and have been working with the Government to develop a comprehensive strategy. This partnership led to the National Policy on Trafficking and the National Plan of Action on Trafficking. Together they set out a detailed plan to combat trafficking in Nepal.

86. The National Plan of Action has six areas of implementation. The first is the drafting of appropriate policies and strategies for action in the various sectors to deal with the problem of trafficking. The second is the enactment of appropriate legislation to prevent trafficking and to punish traffickers. The third area is the raising of awareness among the general population and the criminal justice system to help fight trafficking. The fourth area is health, the fifth area is education and the final area deals with rescue and rehabilitation.

87. The Plan is extremely comprehensive and well thought out. However, like so many other initiatives it focuses on the victim, on raising awareness, health and education and rescue and rehabilitation. It is not very concerned with the trafficker, the prosecution of traffickers and the punishment of those who engage in the trade in humans. Given the fact that it is an initiative of the Ministry of Women, Children and Social Welfare, this is understandable. In this regard, the Special Rapporteur found that while the Ministry for Foreign Affairs and the Ministry of Women, Children and Social Welfare were very sensitive to the issue of trafficking, the Ministry

of the Interior was quite ill-informed and seemingly unconcerned with the problem. The Special Rapporteur feels that unless the Ministries of Law and the Interior are actively included in the trafficking initiative, the campaign against trafficking is bound to fail.

88. The Plan is to be implemented through the establishment of a national-level coordination committee under the Ministry of Women, Children and Social Welfare. In addition, a National Task Force on Trafficking consisting of secretaries to all the ministries is to be set up. There is also to be a district-level task force and a village development committee task force responsible for programme formulation, follow-up and monitoring. In all senses the Plan seems comprehensive. The Special Rapporteur was informed that all the committees had been set up during the course of 1999/2000. However, when she inquired about them, she was surprised to learn that they had rarely met or made any decisions. The representatives of the Ministry of Women, Children and Social Welfare said that it was difficult to get the national-level task force to meet. When the Special Rapporteur met a district-level committee she was told that the task force had met twice but that the Chairwoman was too busy to attend. The Special Rapporteur is therefore concerned about the gap between theory and practice and plan and implementation. In Nepal, this gap seems enormous. With every good intention, the Government sets up a policy, a law or a framework but in practice little is done on the ground. The Special Rapporteur feels that if the Government is truly committed to the issue, it will lessen the gap between national policy and national practice and seek to implement its promises.

89. In addition to the above, the Ministry of Labour has established a welfare home for women affected by trafficking and set up a skills development programme within that home. The Central Child Welfare Board as well as the district-level boards are being sensitized to look into the problem of trafficking and the Nepalese Bar Association provides legal support to women who are affected by trafficking.

The criminal justice system

90. The Special Rapporteur was pleased to have a consultation with the Nepalese police and to meet Mr. G. Thapa, a regional specialist on the problem of trafficking. The Government told the Special Rapporteur that some members of the police force had participated in a human rights training/trafficking workshop conducted by UNICEF which, it is reported, will become an integral part of the police training. Non-governmental organizations, human rights lawyers, United Nations agencies, and members of the police force will conduct it.

91. The police have also set up women's units in each police station to investigate women-related crimes, including search, inquiry and investigation. The Special Rapporteur visited a border police post and met with officials. In combating trafficking at the border the police are assisted by the NGO Maiti Nepal, which helps identify potential traffickers and their victims. So far the system of identification does not seem to have been abused and has in fact led to a great deal of assistance. Since some of the Maiti Nepal staff were earlier victims of trafficking, their assistance and knowledge have been invaluable. The Special Rapporteur was encouraged that the police at the border posts seemed very aware of the problem of trafficking and determined to deal with it.

92. The Nepalese judiciary has a mixed record when it comes to the problem of trafficking. The Supreme Court, despite some controversial rulings on women's inheritance rights, has generally held that Nepal is a signatory to the Convention and that international standards apply throughout the country. However, at the level of the lower judiciary, there is a high rate of acquittal for traffickers. Members of the judiciary argue that one of the reasons for these acquittals is that the police do not present enough evidence and the problem lies in the investigative power of the police. For this reason the Special Rapporteur suggested to the Government that it draw on available international expertise and seek technical assistance from international bodies to develop investigative skills.

93. Nepal has a National Human Rights Commission that has recently been set up to deal with human rights issues though it has not directly dealt with the problem of violence against women yet. One of the proposals put forward to involve the Commission has been to create a post of national rapporteur on trafficking within the National Human Rights Commission.

Rescue and social welfare

94. As in Bangladesh, rescue and social welfare for victims of trafficking have been left to NGOs. Several NGOs have rehabilitation and training programmes for victims of trafficking. Maiti Nepal, for example, has gained an international reputation for its work in this field. However, the Ministry of Women, Children and Social Welfare has opened a Women's Self-Reliance and Rehabilitation Centre 45 km from Kathmandu, which is a skills-training centre for women rescued from being trafficked and for women and girls at risk of being trafficked. It is reported that the centre is unfortunately inaccessible for many women, as it does not accept women who have children or women who have HIV/AIDS.

95. One of the major problems facing Nepal is the problem of AIDS resulting from the trafficking industry. Unfortunately, many of the women taken to India return to Nepal to spend their last years in terrible pain and suffering. According to estimates given to the Special Rapporteur, there are 38,000 HIV-positive persons in Nepal. There are worrying reports that even medical staff are unaware of how to treat the problem and have only minimal knowledge about how the disease is transmitted. There also does not seem to be an understanding of confidentiality requirements and voluntary testing practices. Some victims recounted that hospitals had refused to take or treat persons with HIV/AIDS for fear of catching the disease. Cremation of AIDs victims costs more than for people who die of other diseases. Some NGOs like Maiti Nepal and United Nations organizations are working with this problem but far more has to be done if the victims are to be helped.

96. The Special Rapporteur would encourage Governments when tackling the HIV/AIDS problem to avoid focusing on "high-risk groups" which can reinforce stereotypes and increase the stigmatization of victims of trafficking. Focus should instead be on behaviour and all sectors of society must be informed. In this context the new UNDP Project on AIDS in South and South-West Asia will be helpful.

97. With regard to prevention, the Government and donors have trained women from the village district councils as social mobilizers. The Ministry of Labour sponsors job- and

skill-training programmes in several districts thought to be sources of trafficking victims, who are given six months' skill training and special awareness raising with regard to the prevention of trafficking.

International agencies

98. The international agencies working in Nepal have been extremely active on the trafficking issue, particularly UNICEF, ILO, OHCHR and UNDP. There is a United Nations Inter-Agency Task Force on Trafficking that is two years old which deals with the problem of trafficking at the district, national and cross-border levels. There are over 60 programmes and projects run by international agencies on the problem of trafficking.

99. The most important recent initiative to come from the international agencies is the Joint Initiative in the Millennium Against Trafficking of Women and Girls in Nepal (JIT), which will be coordinated by UNDP. The overall objective is to reduce the incidence of trafficking by redressing gender inequities and discriminatory practices that make women and girls vulnerable to trafficking. The strategy uses an umbrella approach that builds on the initiatives of the United Nations Task Force on Trafficking, allowing donors and United Nations agencies to pool resources for the implementation of the components envisaged. The initiative involves a "Policy Advocacy Beacon" which would aim at influencing policy in Nepal at the national level. Among the projects to be inaugurated is one that will look at the problem of structural discrimination against women and girls in Nepal, including the gamut of inheritance and family laws. The project also advocates the setting up of a national rapporteur for trafficking and human rights at the Human Rights Commission, the publication of a human rights manual, the collection of national-level data, advocacy in the media and the establishment of a monitoring mechanism on trafficking.

100. In addition to policy efforts, there will be activity at the district level which will aim at developing leadership skills among women and raise awareness with regard to trafficking, health and legal advocacy. A handbook is being prepared that could be used at the district level. There will also be an attempt at building up cross-border cooperation between police, NGOs and media officials. A comprehensive strategy of rescue, rehabilitation and reintegration will be planned involving the concerned countries in the region.

101. In the context of OHCHR's ongoing project of technical assistance to the Government of Nepal, OHCHR, in cooperation with the United Nations Task Force on Trafficking, is developing a pilot anti-trafficking project in two selected districts of Nepal. The core of the project will be the establishment of special courts (as provided for in the Constitution) to deal with trafficking cases. These courts will be supported by trained police working from special "women's stations". Criminal justice initiatives against trafficking will also be supplemented by a range of activities aimed at increasing public awareness and civic responsibility. Additional activities will be directed towards supporting the reintegration of trafficked women and girls. A separate project component will be dedicated to activities aimed at fostering cooperation between Nepalese and Indian police/border and judicial authorities in order to promote a more effective cross-border response to the trafficking problem. This component should work towards the development of a bilateral treaty on the subject of trafficking.

102. UNICEF has played a key role in advocacy and awareness raising on trafficking. It has developed and conducted training workshops with law enforcement agencies, especially the police, and sponsored legal training, and has set up paralegal committees at the ward, village district council and department district council levels. UNICEF has also provided support for drafting a revised anti-trafficking Act. The United Nations Development Fund for Women (UNIFEM) will also be a partner in JIT through its Regional Programme against Trafficking. The UNIFEM South Asia regional office has also undertaken a wide range of projects in the region on violence against women and trafficking.

Non-governmental organizations

103. Nepal has a very dynamic NGO sector, both international and local, working to ensure women's rights, and many of these NGOs have specifically addressed the trafficking issue. NGOs provide various kinds of programmes including training, support services, advocacy and awareness raising.

104. In the context of NGOs, the Special Rapporteur would like specially to commend the work of Maiti Nepal, an NGO that has made a major difference in the combating of trafficking, and to pay a special tribute to Anuradha Koirala, the founder and Head of the organization. Critics of Maiti Nepal were of the view that Maiti Nepal did not always respect the will of the women concerned and used drastic measures to deal with the problem. These criticisms may have some validity but they can easily be dealt with by the organization. However, the overall work of the organization in rescuing and providing shelter and training for trafficking victims, in supporting children of sex workers and in pioneering work with AIDS victims has to be admired and appreciated.

105. The Special Rapporteur visited a Maiti Nepal transit home in Bhirahawa. Maiti Nepal staff, some of whom had been trafficked themselves, work on the border in cooperation with the border guards. They monitor the flow of persons across the border from early morning to night. If they see a woman who looks like she may be a potential victim (some 5-16 women a day), they stop and talk to her until they are satisfied that she is clear about her destination and aware of the problem of trafficking in India. If they think there is a problem, they take her to the police station.

106. Maiti Nepal also have prevention centres, where they are providing skill training and awareness raising in the villages for girls/women to offer them alternative ways of making a living. In addition, Maiti Nepal is setting up a support system for AIDS victims and making special efforts at health advocacy among the victims.

107. There are also other important NGOs working on this issue. Among them are the Asia Foundation, the Forum for Women, Law and Development, ABC Nepal, Child-Workers in Nepal (CWIN), Shakti Samuha, WOREC, the Informal Sector Service Centre (INSEC), the International Institute for Human Rights, Environment and Development (INHURED), Action Aid, PLAN, Redd Barna, the Alliance Against Trafficking in Women and Children in Nepal (AATWIN) and the National Network Against Girl Trafficking. All of these groups play a vital role.

VI. INDIA

108. India is a source, a transit point for persons trafficked to Pakistan and the Gulf States, and a destination for trafficked persons. India remains the main receiving country in the region of victims of trafficking. NGOs estimate that more than 12,000, and perhaps as many as 50,000 persons are trafficked into India annually from neighbouring countries.

109. Women and girls are trafficked into India for sex work, for forced labour and for forced marriage. Forced prostitution remains the primary goals of many of the traffickers. While a survey by the governmental Social Welfare Board estimates that in 1991, in six metropolitan cities there were about 1 million women and children engaged in sex work, the Indian Association for the Rescue of Fallen Women estimates that in 1992 there were 8 million women and children in sex work.

110. Internal trafficking also occurs from the rural, economically depressed areas to the cities. According to the Indian Centre for Indigenous and Tribal Peoples (ICITP), more than 40,000 tribal women, mainly from Orissa and Bihar, have been trafficked.

Legal framework

111. The Government of India is signatory to the Convention on the Elimination of All Forms of Discrimination against Women but has made reservations to article 16 dealing with family law and family life. In a famous case, Visakha v. State of Rajasthan, the Supreme Court of India held that the Convention was an essential part of Indian law. The Indian Constitution specifically prohibits trafficking, in article 23, but the term is not defined in detail. It has been interpreted as a generic definition that applies to the State as well as the private sector.

112. The Supreme Court has used the articles in the Constitution that deal with equality, human dignity, the right to life and trafficking to be activist when it comes to the rights of women. Of all the judiciaries in the world, the Supreme Court of India has made a name for itself internationally as the one that has championed the cause of women within a constitutional framework. Whether it is women in a remand home, Air India hostesses, or sexual harassment, the Supreme Court of India has made pathbreaking decisions.

113. The Supreme Court has delivered two important judgements with regard to the issue of trafficking. On the issue of child prostitution, in the case of Vishal Jeet v. Union of India, the Supreme Court called on the central and state governments to set up advisory committees to advise government on matters relating to child prostitution and social welfare. As a result of this decision, the Government of India set up a Central Advisory Committee on Child Prostitution and state governments also set up advisory committees.

114. In the second decision, Gaurav Jain v. Union of India, the Supreme Court in 1997 directed the Government to constitute a committee to make an in-depth study of the problem of prostitution and child prostitutes and to develop strategies for their rescue and rehabilitation. A Committee on Prostitution, Child Prostitutes and Children of Prostitutes was constituted, headed by the Secretary, Department of Women and Child Development. Its report was submitted in 1998. A copy was presented to the Special Rapporteur.

115. The primary legal framework that deals with the problem of trafficking is the Prevention of Immoral Traffic Act of 1986 (PITA). This Act is supplemented by provisions of the Indian Penal Code that are based on the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Prostitution is not illegal in India but soliciting and exploiting prostitution are offences. The framework for laws are very close to those prescribed by the 1949 Convention. PITA was amended recently and the presumption of guilt is now on the accused for cases in which children or minors are found in a brothel who have been determined by medical examination to have been sexually abused. PITA has made stricter punishment for offences relating to children.

116. PITA also provides for the appointment by the Government of a police officer to fight trafficking nationwide. Such a person had not been appointed when the Special Rapporteur arrived in India. However, the Secretary of the Home Ministry promised the Special Rapporteur during the course of her visit that such an officer would be appointed. At a meeting held at the end of her stay, the Government informed the Special Rapporteur that the order appointing the officer had been made and that the officer was female and sensitive to gender issues.

117. There are many efforts under way to replace PITA with comprehensive trafficking prevention legislation. The National Commission on Women is looking into this possibility. The Special Rapporteur is very apprehensive about these initiatives given the experience in the other SAARC countries. The human rights implications of the new legislation are very disturbing. Many of the drafts shown to the Special Rapporteur contain the same negative features that were discussed above in the General Findings section. The texts criminalize prostitution, give police sweeping search and seizure powers, alter evidentiary requirements and stipulate mandatory punishments for traffickers. The only innovative bill in this regard is the one prepared by the National Law School of the University of India, which has strong provisions to fight trafficking but which also respects the right of sex workers. It attempts to organize them to prevent sexual exploitation and to protect health and hygiene in sexual work. It is the Special Rapporteur's belief that unless something like this can be adopted, PITA, with some amendments, should remain as the principal legal framework for combating trafficking.

118. According to the report of the Committee on Prostitution, Child Prostitutes and Children of Prostitutes submitted by the Department of Women and Children pursuant to the Supreme Court decision, the number of cases involving trafficking has lessened in recent years, especially during the period 1991-1995. However, given the fact that commentators have indicated to the Special Rapporteur that trafficking is on the increase, that statement may reflect the fact that PITA is not fully implemented. In addition, there are regional variations. The states of Tamil Nadu, Karnataka, Maharasthra and Andhra Pradesh account for 96.5 per cent of the cases. The question is also raised about which aspect of PITA is being implemented. Government officials and NGOs claim that 80 per cent of the cases registered under PITA are for soliciting. So the person who is being arrested is the victim. The number of actual cases of trafficking filed against traffickers is marginal. This proves the argument of many women's groups that more stringent laws and law enforcement may actually result in greater victimization of women and girls.

119. Other legislation that also has some bearing on trafficking cases, and in particular protective custody, are the following:

(a) The Indian Penal Code, 1860, includes offences, among others, relating to wrongful confinement, kidnapping, abduction, slavery and forced labour, and sexual offences. Of particular significance are importation of a girl from a foreign country, selling of a minor for purposes of prostitution, buying a minor for purposes of prostitution, and rape;

(b) The Juvenile Justice Act 1986 has elaborate provisions for the care, protection, treatment, education, vocational training, development and rehabilitation of children rescued from those procuring, inducing and taking persons for the sake of prostitution and detaining persons in premises where prostitution is carried on. Such children are covered under the definition "neglected juvenile". Besides the police, any person authorized by the state government may bring the juvenile before the Juvenile Welfare Board for placement with a fit person or a fit institution, or failing which, in a juvenile home. Voluntary institutions also function as protective homes under the respective laws. These institutions must function on the basis of certain minimum standards of care and reformative treatment;

(c) The Foreigners Act, 1946, which regulates the entry, stay and departure from India of foreigners, is also relevant to the trafficking issue.

120. The governments of Maharasthra and West Bengal, the states that the Special Rapporteur visited, deal with trafficking under PITA and similar criminal law provisions. In this context, the Special Rapporteur was encouraged to note the approach of the government of Maharasthra and its Secretary, Mr. Sharma, who displayed very keen interest in the visit of the Special Rapporteur and involved her in intensive discussions on the future course of action. At the end of her visit, the Chief Minister of Maharasthra promised to set up a special team to study the problem of trafficking and to set up mechanisms to combat trafficking. She was also encouraged to note that they took up her suggestion that the new law to combat organized crime, the Maharasthra Organized Crime Act, should also include a protocol on trafficking like its international counterpart. The government also seemed interested in meeting the social welfare requirements of the women victims and the team was asked to look into this matter in detail.

Programmes and policies to combat trafficking

121. The year 2001 has been named Women's Empowerment Year by the Government of India and a host of activities will take place with regard to the rights of women under the ninth five-year plan (1997-2002), which has identified the empowerment of women as a strategy for development.

122. The National Commission for Women (NCW) is the body that takes the lead with regard to the protection of the rights of women. The Commission's mandate is to safeguard the rights and interests of women by running legal awareness programmes, looking into complaints regarding the violation of women's rights, examining the non-implementation of laws as well as non-compliance with policy guidelines, providing relief to women by taking up their concerns with the appropriate authorities, conducting research, undertaking investigations, etc. The NCW also has the powers of a civil court when investigating any case provided for by the NCW Act 1990. Combating the trafficking of women is one of its main areas of priority. When the Special Rapporteur made her visit, the Commission was in the process of engaging in national-level consultations with a view to amending PITA. It has been involved in

consultations in all the states and has talked to state officials, NGOs and the sex workers themselves. The Commission organized a very informative half-day workshop for the Special Rapporteur on trafficking. The members of the Commission seemed very committed to combating trafficking as well as other crimes of violence against women. In addition to reforming the law, the Commission has through public interest litigation intervened in the courts to protect the rights of victims of trafficking. The Commission is also in the process of working out a curriculum for gender training of the police.

123. The Department of Women and Child Development within the Ministry of Human Resource Development of the Government of India is the other official entity that plays an important role in protecting the rights of women. The Department's mandate is to formulate plans and policies, to enact and amend legislation, and to guide and coordinate the efforts of governmental and non-governmental organizations that work with women and children. The present Secretary seems very committed to developing a strategy on trafficking for the Department. The previous Secretary chaired the Committee on Prostitution, Child Prostitutes and Children of Prostitutes.

124. The Committee's report contained a Plan of Action, which was very interesting and included innovative ideas. The section on awareness raising and the provision of health services is particularly useful and comprehensive. The Social Welfare component is dealt with in detail, from rescue to rehabilitation, to education of the children of prostitutes, to housing and shelter. The section on health services is also very comprehensive, arguing for the setting up of health care centres in red light areas specializing in HIV/AIDS and the conducting of awareness and education campaigns on AIDS. Unlike other plans in the region, there is a determined effort to include psychological counselling as an aspect to health care.

125. The aspects of the Plan of Action that the Special Rapporteur feels pose human rights problems are, among others, the suggestion that the children of prostitutes be removed from their mothers to more healthy environments. This is a very disturbing violation of the right to family even if it is done with good intentions. The report also seems to rely on social surveillance as a method of preventing and fighting trafficking. Given the hierarchies of class, religion and caste, this can result in a great deal of abuse. Some of the women we interviewed described this abuse in detail, describing how certain women and groups are targeted for this type of social surveillance. Accountable state institutions are better vehicles for enforcement than social surveillance. In addition, the report focuses on the victim and has little to add with regard to laws and strategies for finding and punishing traffickers.

126. The Department of Women and Child Development is also planning to commission a nationwide survey on trafficking in order to collect comprehensive data on the subject so that the Government will know the nature and extent of the problem. This survey will be done with the support of the ILO.

127. There are also a number of state-level initiatives on trafficking.

128. At the level of state governments, especially in Maharasthra and West Bengal, the relevant ministries of women and child development were also in the process of developing programmes to combat trafficking. At the moment, much of the social welfare work has been

relegated to NGOs and the state governments have not played an active role. The government of Maharasthra was very eager to develop a plan and a programme to combat trafficking. The Special Rapporteur hopes that her visit will be a catalyst for this endeavour as much of the abuse resulting from trafficking takes place in Bombay and its environs. Bombay is located in Maharasthra.

129. The National Human Rights Commission was another institution that seemed very committed to eradicating trafficking in India as a human rights problem. The Commission has a good reputation in the country and is seen as fair and activist with regard to the protection of human rights. In discussions with the Special Rapporteur, the Commissioners intimated that they had decided to set up a focal point for trafficking within the Commission. They hope to deal with the issue as an important aspect of human rights protection in India.

Criminal justice system

130. Trafficking in India cannot be combated without the unstinting support of those who work in the criminal justice system. Given the international and national attention on trafficking, the Indian ministries dealing with home affairs and law are slowly beginning to deal with the problem. Unlike the Ministry of Human Resource Development, these "bastions of patriarchy", as one NGO activist put it, in all the countries are slower to respond to the crisis. However, the Secretary, Ministry of Home Affairs in India promised the Special Rapporteur that a special officer and a unit on trafficking would be established in the Ministry that would deal with trafficking at the national level. The Special Rapporteur was informed at the end of the visit that this had been done.

131. Once there is political commitment, the police forces in India would begin to adapt to the new reality that trafficking is prohibited and that police corruption in this area must be eradicated. There appears to be a beginning. A manual for police training in the area of trafficking is currently being developed with the help of UNICEF. Such a handbook, translated in all the regional languages, would be a first step in the process of furthering effective law enforcement.

132. At the local level, the Special Rapporteur was informed that the Maharasthra police were also compiling a handbook and working out a gender sensitization programme for the police. The female officer in charge of the women's unit of the Maharasthra police described in detail the initiatives taken by the Maharasthra police to combat violence against women. The programmes seemed comprehensive, with the police playing an active role. She said that similar programmes would be developed to combat trafficking during the course of the year, in consultation with the Women and Child Department. The Special Rapporteur offered the technical services of OHCHR to assist the Maharasthra police in this endeavour. In Calcutta too, the West Bengal police described in detail strategies and programmes to make the West Bengal police more gender sensitive. In recent times successful raids had taken place and many minors rescued, both in Maharasthra and West Bengal.

133. The victims of trafficking tell another story. The rescued minors and sex workers the Special Rapporteur spoke to recounted story after story of corruption in the police forces of Maharasthra and West Bengal, especially concerning sex workers. Numerous incidents of police

corruption that were witnessed by sex workers were recounted, as described in the General Findings Section. The Special Rapporteur reiterates that unless that message is received by the average cop who works in the red light areas and other trafficking routes that corruption will not be tolerated, there will be impunity for traffickers and the rights of women and children will be abused.

134. Also as noted earlier, despite the Supreme Court having given very clear direction that trafficking is a major violation of women's fundamental rights, at the lower levels of the judiciary the picture is again mixed. Some judges in Maharasthra and West Bengal have been very activist. In February 1996, the Maharasthran High Court, acting on a newspaper article, intervened and rescued 469 girls, many of whom were Nepalis. Critics have called some of these judges publicity seekers but in actual fact, they have done a great deal to further the quality of life in India with regard to fundamental rights. At the same time the Special Rapporteur heard of cases in which judges have been insensitive, sometimes even sending the victims to jail, and of long confinement in government homes pending a hearing of their cases.

Rescue and welfare programmes

135. The approach of state governments to the problem of rescue and social welfare centres around giving the women shelter in Government-run homes while their lives are sorted out. There are two kinds of home. The first is a Protective Home established by the Government for women and girls taken in under PITA. There are 80 such homes throughout India. The second type of home is a Short Stay Home. The Department of Women and Child Development assist these homes. There are also Juvenile Homes set up under the Juvenile Justice Act. Women rescued from brothels and from being trafficked may be assigned to any of these homes at the discretion of the judges.

136. The Special Rapporteur seriously questions the use of government homes as a means of "rehabilitating" victims of trafficking. From what she has seen, there are serious human rights implications associated with this strategy. Firstly, the women are not in these homes voluntarily. In the home that the Special Rapporteur visited, all the women said they wanted to leave. Having done nothing wrong, they are kept in homes that are akin to jails. Secondly, the conditions in these government homes from all reports are unsatisfactory. The one the Special Rapporteur visited was gloomy, the conditions barely basic and the women seemed extremely unhappy and idle. The Special Rapporteur suggests that the Government set up a committee involving government and NGO officials to review the conditions in these homes and to devise alternative modes of providing social welfare to women without depriving them of their basic rights.

137. The Central Social Welfare Board also provides financial assistance to NGOs to run centres and short-stay homes for women in need. Some trafficked victims are sent to these homes. In addition, financial assistance is given to NGOs to run development and care centres for the children of the sex workers. These centres are set up in the red light areas and provide day care along with educational support programmes and nutritional programmes for the children.

138. During her visit, the Special Rapporteur visited many homes managed by NGOS. Some were excellent, model institutions while others resembled the government homes. St. Catherine's in Maharasthra stands out as a model home though critics argue that, like at Maiti Nepal, there is a "moral overdose" given to victims of trafficking. Regardless of this, the premises were clean, and the women seemed alert and happy and involved in their work with a wide variety of programmes to keep them occupied.

139. Given the wide range of institutions she visited, the Special Rapporteur would assert that NGO management with government monitoring provides the best framework for the provision of social welfare to women and girl victims of trafficking. In any event, if human rights principles are to be respected the concept of "protective custody" in India must be reconsidered. Women and girls should never be kept in government or NGO homes against their will except in very exceptional circumstances.

International agencies

140. Unlike in the other countries in the region, the United Nations in India does not have an integrated, coordinated strategy to address trafficking. There is no inter-agency task force. However, UNIFEM, ILO and UNICEF, amongst others, have some very important regional programmes with regard to trafficking which are also functioning in India.

141. UNAIDS has also formed a Regional Task Force on Trafficking and HIV/AIDS in order to develop and facilitate regional interventions. The UNDP Regional Office has been assigned the role of coordinator of the activities under this initiative. The UNDP project on HIV and Development in South and South-West Asia was prepared in consultation with UNICEF, UNIFEM and WHO. The main objective is the empowerment of women and girls to enhance human security and mitigate factors that create their vulnerability to trafficking and HIV/AIDS, including social, economic and sexual exploitation and discrimination.

142. UNICEF has played a key role in advocacy and awareness raising on the issue within the region. Its country offices have also developed and conducted training workshops with law enforcement agencies, especially the police, on sensitization, investigation and establishment of women's units. It has sponsored research for situation analyses on trafficking in the various countries and supported skills training, protection and reintegration for children at risk, survivors of trafficking and children of sex workers. The Rights Cluster has activities regarding the trafficking of children and adolescents. The India office has supported both Government and NGOs in developing and implementing various kinds of activities and programmes on trafficking, working closely with the Department of Women and Child Development; it has also sponsored cross-border police workshops on the issue of trafficking.

143. UNIFEM provides technical assistance to the ministries concerned with women and children in the respective countries. UNIFEM has undertaken advocacy and sponsored action-research on trafficking in the region. It has played a leading role in supporting advocacy on the part of NGOs on the SAARC convention. UNIFEM also provides technical assistance to the various women's ministries and departments in developing databases and collating information.

144. The International Programme for the Elimination of Child Labour (ILO/IPEC) supports NGO prevention programmes, awareness raising, rescue and rehabilitation. Assistance is provided to projects to develop training packages to sensitize primary schoolteachers in human rights and child rights, and to establish "prevention camps" in trafficking-prone areas. ILO/IPEC also supports workshops for legal experts and prosecutors on enforcement and legislation regarding trafficking. ILO conducts intensive advocacy on the issues of child rights and child labour and works closely with the ministries of labour and social welfare in the concerned countries.

145. The International Organization for Migration (IOM) has placed trafficking on its regional agenda and is concerned with understanding and operationalizing the distinctions between migration and trafficking. IOM focuses primarily on cross-border trafficking and seeks to strengthen organizations and programmes which provide support to survivors of trafficking. UNFPA, WHO and UNAIDS are also committed to addressing the issue of trafficking through their principal mandates.

Non-governmental organizations

146. National and international NGOs working in India should be congratulated for raising awareness and for putting trafficking on the world's agenda as a high-priority issue. The Special Rapporteur could only visit a few NGOs during her visit. It is not possible to mention all the NGOs working on this issue (a list of selected persons/organizations with whom the Special Rapporteur met during the mission is contained in the annex); however, a few NGOs that the Special Rapporteur visited deserve very special mention.

147. The most unusual NGO that the Special Rapporteur met was the Durbar Mahila Samanvyaya Committee (DMSC) and the Usha Collective of Sex Workers in Calcutta. These are self-help organizations of sex workers that have begun to address how to reduce forced entry of women and voluntary or forced entry of minors into the sex industry, including through trafficking. DMSC aims at mass-scale mobilization of sex workers to organize for their rights, better working and living conditions and freedom from abuse, coercion, violence and stigmatization. DMSC members have made a formal commitment to prevent the forced entry of women and the trafficking of minors into the industry. DMSC hopes to monitor this through its self-regulatory board. If trafficking into the sex industry is to be combated, the support and active participation of sex workers is extremely useful. They have the inside information about the methods employed, the perpetrators, as well as the location of the victims. The women from the DMSC that the Special Rapporteur met were committed women who were fighting a difficult cause with dignity and fortitude.

148. Prerana in Bombay and Sanlaap in Calcutta are also exceptional NGOs. Prerana has a project to eliminate second-generation trafficking of children into sexual exploitation, a night care centre for the children of the red light districts and a placement programme for the children of women sex workers. It is also trying to get ration cards for sex workers. The activities of Prerana have evolved through constant consultation and interaction with the beneficiaries. They are aimed at enhancing the capacity and self-reliance of the victims rather than generating new dependence. Prerana is currently fighting a case under public interest litigation at the Bombay High Court against the state government of Maharashtra to improve the post-rescue operations.

Sanlaap also provides shelter for women and child victims, health services, legal and psychological counselling and a whole array of other services. Committed staff supports it and its success lies in the large number of children and women who come to them for assistance on a voluntary basis. The children and women in their care seemed healthy and happy despite conditions of poverty.

149. Another NGO that seemed to provide exceptional services given the resource constraints in the NGO sector was St. Catherine's Home in Bombay for rescued children, abused children from brothels, and children with HIV/AIDS. St. Catherine's strives to provide a happy home environment for the children so they can learn and discover themselves and their potential through education and vocational training. Clean and friendly, St Catherine's seems, like the other NGOs mentioned above, a model NGO.

150. There are many NGOs working in the field with great enthusiasm and commitment. As a general rule, their centres, especially when they are monitored by the Government, are far cleaner, healthier, and provide more services than Government-run homes. However, government officials in Maharasthra did say that there were also many NGOs that are financially corrupt and provide minimum services to the women and girls. NGO management may be better for the women and children but government monitoring of standards is also essential if the victims of trafficking are to be given the necessary social welfare services.

VII. RECOMMENDATIONS

International

151. The international community must continue to play a proactive role in preventing trafficking in the South Asian region. More resources should be given to the Governments of the region to meet this problem of human servitude and forced labour. In this connection, the Nepalese effort should be replicated in the other SAARC countries. There should be an Inter-Agency Task Force on Trafficking or a Joint Initiative on Trafficking involving all the international agencies. Cooperation among the agencies is essential if there is to be a coordinated effort to deal with the problem of trafficking in South Asia.

Regional

152. The countries of the SAARC region should get together to collect comprehensive data on trafficking. There should be a central database and a regional survey to assess the nature of the problems, the numbers involved, the profile of the trafficking victim, the profile of the trafficker and the response of national Governments. The collection of data is absolutely necessary if the problem is to be dealt with effectively.

153. The adoption of the SAARC Convention on Trafficking should be encouraged. If the present draft Convention is signed, there should be an amendment conference within a year to ensure that the definition of trafficking in the SAARC instrument is in conformity with the international language agreed upon at Vienna for the Convention on Organised Crime Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention on Transnational Organized Crime. In addition,

the social and economic rights of the victims should be respected in the section entitled "Rehabilitation". A monitoring mechanism should be set up along with a regional fund to help victims of trafficking once they are rescued.

154. There should be an intergovernmental regional task force on trafficking that will plan and implement a concerted strategy for the region. This task force could be linked to the women and child ministries of the respective countries. In addition, there should be an interregional police task force to fight trafficking, track traffickers and gather jointly intelligence on trafficking rings.

National

155. The Governments of the region should each have a national plan of action to combat trafficking. To prevent such a plan from being just a piece of paper, there should be a monitoring mechanism involving Governments, NGOs and international agencies.

156. There should be a nodal agency entrusted with implementing the plan. In some of the SAARC countries there is such a nodal agency for drug prevention. Human trafficking is a far more despicable crime than drug abuse. The establishment of a nodal agency would give the world a sense that the countries take this issue seriously and that there is political will to eradicate trafficking.

157. Legislation to combat trafficking should be considered, but only if it complies with international human rights standards and does not violate the rights of women. Nothing should be done to prevent the freedom of movement of adult women. No law or regulation should place them at the mercy of the men in their families or in their villages. Their autonomy must be respected.

158. Governments should refrain from enacting regulations and orders that restrict the free movement of women under the guise of fighting trafficking. Instead, measures aimed at educating women about their rights and raising awareness about conditions in receiving countries should be compulsory. The respective embassies in receiving countries should be proactive in providing assistance to women and girl victims of trafficking.

159. "Protective Custody" as a means of dealing with victims of trafficking should be reconsidered. Women who are victims of trafficking have not committed any crime. For this reason, they should not be detained. Any stay in a government home should be voluntary. In addition, conditions in these homes should be such that the women would want to stay there voluntarily. There should be programmes to keep women occupied; there should be legal and psychological counselling and an effort to help the women plan their future. Proven NGOs should manage such homes with government monitoring and supervision.

160. In cases of trafficking victims who are foreign nationals, the Governments of the region must work towards facilitating their voluntary return, if that is appropriate, rather than detain them for long periods in government homes.

161. All the countries of the region should have training for their police forces on how to combat violence against women in general as well as trafficking. The training should consist of

awareness raising on the issue as well as development of investigative skills so that crimes of violence against women are investigated and prosecuted with proper evidence. The Special Rapporteur suggests that the countries of the region draw on international expertise present at OHCHR and the United Nations Office for Drug Control and Crime Prevention in Vienna.

162. Corruption in the police seems a significant problem in all the countries of the region, especially in the area of trafficking. There should be a clear direction from the top of the police hierarchy that such behaviour will not be tolerated and police officers who engage in such activity should face severe consequences.

163. There should be seminars and workshops with judges in the region to increase their awareness on issues relating to violence against women, as well as to issues related to trafficking. There are a number of such programmes already in existence and they should be encouraged.

164. The human rights commissions in all the countries of the region should make trafficking a special focus of their work.

165. Witness protection schemes should be set up for women victims so that they will testify against their traffickers. Such schemes should assist the police in presenting evidence before the courts and would help to secure a higher rate of conviction.

166. There should be a concerted effort to deal with the problem of HIV/AIDS in the region. Resources should be allocated to deal sufficiently with the problem. Special centres should be set up in the red light districts to assist sex workers. International standards on "voluntariness" with regard to testing and confidentiality should guide the campaign. Gender training for the medical profession should be provided to ensure that women receive non-judgmental, confidential treatment.

167. Prevention programmes should exist in all three countries. Prevention should take the form of awareness raising through the media, through the education system and through social mobilizers in the villages. Prevention should not rely on social surveillance and neighbour spying on neighbour, as such surveillance can be subject to a great deal of abuse.

168. Extensive support should be given to NGOs working in this field. The NGOs working with the children of the sex workers should be given special encouragement along with those who work with the victims of trafficking. A partnership between Government and NGOs working in this field is essential if the problem of trafficking is to be dealt with in the South Asian region.

Notes

[a] For further information please refer to the Special Rapporteur's report on trafficking in women, women's migration and violence against women, submitted to the Commission on Human Rights at its fifty-fifth session (E/CN.4/2000/68).

[b] Human Rights Watch, Rape for Profit, Trafficking of Nepali Girls and Women to India's Brothels, 1995, p.11

[c] Ibid.

[d] Central Welfare Board, Prostitution in Metropolitan Cities of India, New Delhi, August 1993.

[e] This was the figure given to the Special Rapporteur by NGO activists working in Bombay and Calcutta.

[f] Human Rights Watch, op. cit., pp. 20-24.

[g] Jyoti Sanghera, Trafficking of Women and Children in South Asia: Taking Stock and Moving Ahead, for UNICEF and Save the Children Alliance, November 1999.

[h] Ibid.

Appendix

SELECTED LIST OF PERSONS/ORGANIZATIONS WHOM THE SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN MET DURING HER MISSION

BANGLADESH

Dhaka

Mr. Munshi Faiz Ahmad, Director-General, Ministry for Foreign Affairs
Dr. Ali, Acting Foreign Secretary, Ministry for Foreign Affairs
Mr. Rabab Fatima, Director, Ministry for Foreign Affairs
Mr. Abul Hasan Chowdury, State Minister for Foreign Affairs
Mr. Reza, Ministry of Home Affairs
Prof. Zinantun Nesa Talukdar, State Minister, Ministry of Women and Children Affairs
Prof. (Dr.) Tehmina Hussain, Secretary, Ministry of Women and Children Affairs
Mr. Abdul Matin Khasru, Minister, Ministry of Law, Justice and Parliamentary Affairs
Mr. Mahmid Al-Faird, Acting Inspector-General of Police

Ms. Shamim Hamid, Principal Officer, Office of the United Nations Resident Coordinator
Ms. Farah Ghuznavi, Programme Officer, UNDP
Ms. Shahida Azfar, UNICEF Representative
Ms. Jun Kukita, Senior Programme Coordinator, UNICEF
ILO Representative
World Bank Representative
UNHCR Representative
IOM Representative

Mr. Kamal Khairuzzaman, Executive Director, Bangladesh Manabadhikar Sangbadik Forum
Ms. Salma Ali, Executive Director, Bangladesh National Women Lawyers Association (BNWLA)
Ms. Shirin Naer, Advocate, Supreme Court of Bangladesh/BNWLA
Ms. Maleka Begum, Gender Specialist and Researcher
Ms. Ruby Ghuznavi, Convenor, Naripokkho
Ms. Ayesha Khanam, GS, Bangladesh Mahila Parishad
Ms. Salma Sobhan, Executive Director, Ain O Salish Kendra
Ms. Sigma Huda, Advocate, Chancery Chambers, Ain-O-Unnyan Sangstha
Ms. Angela Gomes, Executive Director, Banchte Shekha
Ms. Salima Sarwar, Executive Director, ACD, Rajshahi
Ms. Farida Akhter, Executive Director, UBINIG
Mr. Aminul Islam Miah, GS, Bangladesh Retired Police Officers' Welfare Association, Detective Training School
Ms. Selina Shelley, Country Representative a.i. Oxfam
Ms. Mufawesa Khan, Executive Director, CWFD
Ms. Khushi Kabir, Chairperson, ADAB
Prof. Ishrat Shamim, President, CWCS

Ms. Salma Khan, President, Women for Women
Ms. Lulu Bilkis Khanom, Senior Programme Officer, Dhaka Ahsania Mission
Ms. Naheed Kamal
Ms. Carol Jenkins
Mr. Matthew Friedman
Mr. Rakin Hossain
Aparageya Hostel

NEPAL

Kathmandu

Mr. Ram Chandra Paudel, Deputy Prime Minister
Mr. Mahanth Thakur, Minister of Law
Mr. Arjun Kant Mainali, Section Officer, Ministry for Foreign Affairs
Ministry of Women, Children and Social Welfare
Mr. Badri Bahadur Karki, Attorney-General
Mr. Pradeep SJB Rana, Acting Inspector-General of Police, Chief of Nepal Office
Mr. G.P. Thapa, Deputy Inspector-General of Police, Training Directorate, PHQs
Mr. Jogendra Keshari Ghimire, Secretary, National Human Rights Commission
Ambassador Nihal Rodrigo, SAARC Secretary-General

Mr. Nick Langton, Representative, the Asia Foundation
Ms. Shtrii Shakti
Ms. Sapana Pradhan-Malla, Advocate, Forum for Women, Law and Development
INHURED
Ms. Anu Radha Koirala, Chairperson, Maiti Nepal
Dr. Renu Rajbhandary, Chairperson, WOREC
Ms. Pratima Mudbary, Women for Women Forum
Ms. Saloni Singh, Didi Bahini
Ms. Pramoda Shah, Saathi
Ms. Durga Ghimire, ABC Nepal
Ms. Kamala Hemchuli, Dalit Women's Organisation
Dr. Shanta Thapaliya, LACC
Ms. Tula Rana, Beyond Beijing Committee
Ms. Bandana Rana, Sancharika Samuha
Ms. Madhavi Singh, Coordinator, National Newtwork Against Girls Trafficking (NNAGT)
Ms. Bagwati, AAZWIN
Ms. Indira Shrestha, President, Strii Shakti
Mr. Yubaraj Sangroula, Chairperson, CeLLRd
Mr. Dilli Chaudary, President, BASE
Mr. Dillip Pariyar, President, SAFE
Ms. Shanti, Shanti Punarsthapana Kendra

Mr. Henning Karcher, United Nations Resident Representative
United Nations Task Force on Trafficking
Informal Inter-Agency Group on Trafficking

Ms. Bharati Silawal-Giri, Assistant Resident Representative (Programme), Gender Equality and Social Development Unit, UNDP
Ms. Tania Karpatschof, Gender Programme Officer, UNDP
Mr. Michel Dupoizat, Representative, UNHCR
Mr. J .Musoke, UNFPA Representative

Rupandehi district

Mr. Gupta Bahadur Shrestha, Deputy Superintendent of Police
District officials
Maiti Nepal transit home

INDIA

New Delhi

Mr. Lalit Mansingh, Foreign Secretary, Ministry of External Affairs (MEA)
Mr. A. Gopinathan, Joint Secretary (UNE), Ministry of External Affairs
Mr. Sunu Lai, Director (UNE), Ministry of External Affairs
Dr. Neeru Chadha, Legal Officer, Ministry of External Affairs
Mr. B.K. Chaturvedi, Secretary, Department for Women and Child Development (DWCD), Ministry of Human Resource Development
Mr. Rajmal Banger, Deputy Secretary (GC), Department for Women and Child Development
Ms. Vibha Parthasarthi, Chairperson, National Commission for Women
Mr. Kamal Pande, Home Secretary
Mr. Arun Jaitley, Minister of Law and Justice and Company Affairs
Mr. Soli J. Sorabjee, Attorney-General of India
Ms. Sumitra Mahajan, Minister of State for Human Resource Development
Mr. Justice J.S.Verma, Chairman, National Human Rights Commission
Mr. Ajai Raj Sharma, Commissioner of Police, Delhi
Smt. Sunita Sabharwal, Superintendant, Central Jail, Tihar

Mahila Dakshata Samiti
Ms. Vimla Vohra, Member-in-charge, BAPNU GHAR, All India Women's Conference (AIWC)
Satya Ravi Shakti Shalini
Ms. Madha Joshi, Joint Women's Programme
Ms. Ranjana Kumari
Ms. Sushila Kanshik
Dr. Syeda Sitmad
Ms. Akida Sivadasa, Media Advocacy Group
Dr. Jyoti Sanghera
Mr. Nair

Ms. Brenda Gael McSweeney, United Nations Resident Representative
Mr. Richard Conroy, Senior Deputy Resident Representative, UNDP
Ms. Sonam Yangchen Rana, UNDP
Ms. Padwa Seth, Consultant, UNICEF
UNIFEM

Mumbai

Hon. Chief Minister, Maharashtra State
Chief Secretary, Maharashtra State
Adv. Nirmala Samant Prabhavalkar, Chairperson, Maharashtra State Commission for Women
Smt. T.F.Thekkekara, Hon. Member Secretary, Maharashtra State Commission for Women
Shri. A.N. Borade, Officer, Maharashtra State Commission for Women
MAVIM, the corporation for economic development of women
Ms. S. Sridevi Goel, Deputy Inspector-General of Police, Maharashtra
Police Station, Kamathipura
St. Catherine's Home, Andheri
Asha Sadan, Umarkhadi
Prerana Trust, Kamathipura
Mr. Ratnakar Khaire, NGO Adviser, Mumbai District AIDS Control Society
Mr. B.Vijay, Hon. Secretary, Shape Up India
Government Observation/Remand Home, Umarkhadi
Ms. Jyoti Mhapsekar, President, Stree Mukti Sanghatana
Mr. Jhilam Roy Chowdury, Research Assistant, Committed Communities Development Trust
Ms. Vipula Kadri, Save the Children India

Calcutta

Ms. Rinchen Tempo, Director of Social Welfare, Department for Women and Child Development, West Bengal
Ms. Manjula Gupta, Principal Secretary, Department for Women and Child Development, West Bengal

ICDS Project
Liluah Government Home
Ms. Indrani Sinha, Secretary, SANLAP
Durbar Mahila Samanwaya Committee